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EASONAL FARMWORKER POWERLESSNESS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MIGRATORY LABOR

OF THE

COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST AND SECOND SESSIONS

ON

BORDER COMMUTER LABOR PROBLEM

MAY 22, 1969

PART 5-B

Printed for the use of the Committee on Labor and Public Welfare

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Part 2: The Migrant Subculture	July 28, 2969
Part 3–A: Efforts to Organize	July 15, 1969
Part 3–B: Efforts to Organize	July 16 and 17, 1969
Part 4–A: Farmworker Legal Problems	Aug. 7, 1969
Part 4–B: Farmworker Legal Problems	Aug. 8, 1969
Part 5–A: Border Commuter Labor Problem	May 21, 1969
Part 5–B: Border Commuter Labor Problem	May 22, 1969
Part 6: Pesticides and the Farmworker	Aug. 1, Sept. 29 and 30, 1969
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Part 8: Who is Responsible?	July 20, 21, and 24, 1970

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MIGRANT AND SEASONAL FARMWORKER POWERLESSNESS

(Border Commuter Labor Problem)

THURSDAY, MAY 22, 1969

U.S. SENATE,
SUBCOMMITTEE ON MIGRATORY LABOR
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommitteee met at 10 a.m., pursuant to recess, in room 2228, New Senate Office Building, Senator Walter F. Mondale (chairman of the subcommittee) presiding.

Present: Senators Mondale (presiding), Williams of New Jersey, Yarborough, and Javits.

Committee staff members present: Robert O. Harris, staff director of the full committee; Boren Chertkov, majority counsel; A. Sidney Johnson, professional staff member; and Eugene Mittelman, minority counsel.

Senator MONDALE. The subcommittee continues its hearings this morning on the topic of the border commuter labor problem as part of our hearings on Migrant and Seasonal Farmworker Powerlessness.

We are pleased to have as our first witness Stanley H. Ruttenberg, former Assistant Secretary of Labor, whose credentials for testifying on this issue are well known.

We are delighted to have you.

STATEMENT OF STANLEY H. RUTTENBERG, FORMER ASSISTANT SECRETARY OF LABOR FOR MANPOWER, AND PRESIDENT OF STANLEY H. RUTTENBERG AND ASSOCIATES, INC., WASHINGTON, D.C.

Mr. RUTTENBERG. I have a prepared statement I would like to have entered into the record, and if I might briefly summarize it and then go on to whatever questions you may want to pose.

Senator MONDALE. The statement will be included in the record as though read.

Mr. RUTTENBERG. Thank you.

I think the problem of the alien commuter is one which was a complex and vexing one when I first took office as Manpower Administrator in 1965, and the situation isn't much different today than it was then in terms of trying to resolve the problem.

I am delighted to be here and talk about the problem. I pose as no expert, certainly, in the field of migratory labor, or even immigration, but I have taken a great deal of interest over time in this problem, and served as a member of the Select Commission on Western Hemisphere

Immigration, as one of five appointees from the executive branch of Government, along with the chairman of that Commission, Mr. Dick Scammon.

We were dealing then with the immigration law in terms of the requirements of determining whether or not a ceiling of 120,000 immigrants should be permitted to enter the United States, but the Commission did agree to hold a series of hearings on the border on the question of the green card commuter, or the alien commuter.

Mr. Scammon and I did hold hearings. We did make specific recommendations, and I want in a moment to refer to those recommendations and talk a little bit about them.

It ought to be clear at the outset that when we talk about a green card person, everybody who immigrates to the United States has a green card.

In this situation we are really talking about those green carders who choose, by their own decision, to reside across the border in foreign contiguous territories, rather than to reside in the United States, and this system has been condoned by regulations of various kinds for some 40 years.

It first started in April 1927.

There is nothing in the legislation, nothing in the law, that condones or even establishes in any way the fact that a commuter, that an alien immigrating to the United States, has a right to reside in a contiguous territory. There is nothing in the law to justify that.

Senator Mondale. Does the law look in the other direction? That is, does the commuter have that right, at least in the theoretical terms of the law?

Mr. Ruttenberg. In theoretical terms, and I am convinced—well, one could put it this way, Senator Mondale.

It is argued this way by the opposition, that because the Immigration and Nationality Act of 1965 didn't do anything about changing the alien commuter, or the commuter resident problem, therefore, by inaction, the Congress condoned what had been going on before. And conversely, if they had wanted to do something about changing it, they would have altered the law.

When I was in the Department of Labor, our Solicitor in the Department prepared a long memorandum and brief, which I have here and could give to you if you want, that legally stated the case in support of the fact that there was no basis in law for the continuation of the commuter system.

Senator Mondale. If you have a copy of that, we would like it for our files.

Mr. Ruttenberg. I will give it to you for your files, and you can decide later whether you want to have it in the record.

The problem at any one point in time involves some 40,000 to 45,000 individuals who live in Mexico but come into the United States to work on a daily basis.

But when the Immigration Service made its surveys, it did not—both in January of 1966 and the later one that involved occupations in November and December, 1967—the Immigration Service did not count the individuals who were coming across the border who may work for a week, a month, or during a season, and who have permanent residence in Mexico, but who live in the United States for a period of a week or more.

Senator MONDALE. They weren't counted at all?

Mr. RUTTENBERG. They were not counted at all, and when one estimates the number of individuals who are alien commuters, the figure would go over 100,000 people, but there are 40,000 to 45,000 whom the Immigration Service has identified as coming across on a daily basis.

Senator MONDALE. In other words, when the Service uses commuter figures, they are talking about the daily commuter. They are not talking about the seasonal commuter.

Mr. RUTTENBERG. That is right, sir.

Senator MONDALE. Do they have separate figures on the seasonal commuter?

Mr. RUTTENBERG. No, sir, there is not really firm data on it. It is data that we ought to have. It is not now available. There are estimates. Many of the individual green card alien commuters who are working in the vineyards of California are probably individuals—one doesn't know, and it is difficult to prove—they are probably individuals who live in Mexico as their permanent home and who reside only for a temporary period of time at the vineyard.

The problem of the commuter creates a serious adverse effect on wages and working conditions in the United States, and in addition another serious problem is that they do inject themselves into strike situations, situations where there has been a certification by the Secretary of Labor.

It is, I think, recognized and agreed by most people that the permission of the continuation of this practice does have an adverse effect, and there is convincing evidence, I think, to indicate this to be true.

On the Mexican border, the wage rates are usually much lower and unemployment much higher than in other cities that are away from the border, and the Department of Labor in 1967 showed that the unemployed rates in Texas border towns was almost double that for other parts of the State.

It decreased in direct relationship to the distance north of the border.

Senator MONDALE. Does your full statement spell that out? We have been trying to find economists in this Nation who are skilled in this particular field to come in and testify about the conditions of poverty and the impact of that condition upon the Nation's economy, not just along the border.

I suspect that one of the reasons we have so many migrant farmworkers is because of the conditions to which you have just referred, because most of the migrants, in fact, do come from places close to the border.

There is a surplus of labor, and working conditions for the unskilled worker are tragically depressed. There is an inexhaustible supply of labor on the Mexican side, composed of unskilled rural people who are unemployed most of the time, and if they get 20 or 30 cents an hour they regard themselves as fortunate. There is no apparent effective way at this point of stopping them from crossing the border, and I think this has a far more pervasive impact, not alone at the border, but on the economy of this country as a whole, in terms of wages and working conditions of all workers.

Mr. Ruttenberg. I would agree with that, and I think that certainly with the large influx of individuals on the border, the wage rates on the border are lower than they are elsewhere. As a matter of fact, the seasonal farmworkers' wage rates are 30 percent lower in the border areas of Texas than elsewhere in the same State.

If that is the case, the unemployed resident on the border, a U.S. citizen born in Mexico, or a native-born American citizen is competing for jobs at very, very low wages, and the wages are reduced as a result of the commuter, and he tends to migrate north into other areas, and is, therefore willing to accept lower rates of pay although they are higher than what he would get if he had remained on the border.

Senator Mondale. Do you have figures on what the unskilled Mexican worker gets paid as an hourly rate if he can find a job on the Mexican side of the border?

Mr. Ruttenberg. There is data available on this, and as I recall the minimum wage of Mexico varies by area within the country, and if I am not—well, I wouldn't want to recall from memory, but there is information available at the Department of Labor that shows what the wage rates are, what the minimum wages are across the border from the United States.

I don't recall that. I was going to say 4 pesos a day, but I don't want to trust my memory on that.

Senator Mondale. If you can get information and submit it for the record on that, we would appreciate it.

(The information follows:)

BASIC DAILY MINIMUM WAGE RATES FOR THE NORTHERN BORDER ZONES AND FEDERAL DISTRICT OF MEXICO, 1966–67 AND 1968–69

[In pesos—1 peso=U.S. $0.08]

Minimum wage zones	General[1]		Rural[1]	
	1966–67	1968–69	1966–67	1968–69
Baja California Norte	35.70	40.00	29.00	34.00
Sonora Costa	22.60	26.25	21.25	24.75
Sonora Nogales	25.75	29.50	24.00	27.25
Chihuahua-Casas Grandes	22.40	24.50	19.75	23.00
Chihuahua-Ciudad Juarez	29.00	31.90	25.00	27.50
Chihuahua Noreste	22.50	25.00	21.00	23.50
Coahuila Centro	15.00	22.25	13.50	18.75
Coahuila Piedras Negras	22.15	26.00	16.00	19.50
Laredo Anahuac	23.50	28.50	19.50	23.65
Tamualyses Matamoros	25.80	29.75	20.75	24.25
Federal District	25.00	28.25	23.00	26.25

[1] In addition to these rates, higher basic minimum daily rates for 24 semiskilled and skilled occupations were published simultaneously with the general and rural rates.

Source: Mexico, National Minimum Wage Commission, official release.

MEXICO, 1968-69 BASIC DAILY MINIMUM WAGE FOR SELECTED SKILLED AND SEMISKILLED OCCUPATIONS, FEDERAL DISTRICT AND NORTHERN BORDER ZONES

[In pesos—1 peso=U.S. $0.08]

Selected occupations	Federal district	Northern border minimum wage zones						
		Baja California Norte	Sonora, Costa	Sonora, Nogales	Chihuahua, Ciudad Juarez	Coahuila, Piedras Negras	Laredo, Anahuac	Tamualipas, Matamoros
Bartender	35.00	49.55	32.50	35.70	38.85	31.10	34.15	35.95
Laundry worker	35.05	---	---	35.70	38.85	---	34.15	35.95
Factory garment worker	---	---	---	---	---	30.45	---	---
Pharmacy clerk	34.00	48.05	31.55	34.75	37.80	---	33.30	35.00
Electrician, building wiring	38.05	53.80	35.30	38.40	41.90	---	36.60	38.65
Public utilities adjuster, electrical dynamos and motors	37.10	---	---	---	---	---	---	---
Electrical appliance repairman	37.30	52.75	34.65	37.35	41.20	---	36.00	38.00
Electrical mechanic, household appliances	37.30	52.75	34.65	37.75	41.20	32.40	36.00	38.00
Automobile and truck repair worker:								
Painter	36.70	51.95	34.10	37.20	40.60	30.65	35.55	37.50
Mechanic	39.55	56.00	36.70	39.80	43.50	34.50	37.90	40.05
Electrician	37.30	52.75	34.65	37.75	41.20	33.35	36.00	38.00
Solderer	36.50	---	---	37.10	40.45	---	35.45	37.35
Tinplater	36.70	51.95	34.10	37.20	40.60	33.25	35.55	37.50
Wrought iron worker	37.35	52.85	34.65	37.80	41.25	33.05	36.10	38.05
Crane operator	36.10	51.00	---	---	---	---	---	---
Printing, composition	35.50	50.30	---	---	---	---	---	---
Pressman	35.50	50.30	---	---	---	---	---	---
Woodmachine operator	36.15	51.20	33.60	---	---	---	---	---
Plumber	37.35	---	---	---	---	---	---	---
Furniture upholsterer	---	---	33.60	---	---	---	---	---

Mr. RUTTENBERG. Over 20 percent of the minimum wage underpayments found by Labor Department investigators in Texas, New Mexico, Arizona, and California were found in border counties of these States containing only about 6 percent of the nonfarm employment.

In order to try to check out the impact on the wages of the commuter, we conducted a study in the Department of Labor in January 1968, which urged very strongly that a study be done, an employment and wage survey of establishments that employed commuters in the Laredo, Tex., area.

This survey produced the first hard data on wages paid to commuters, and we did use this information in connection with the Select Commission on Western Hemisphere Immigration hearings that were held on the border.

This testimony was taken in Laredo, Tex. As I say, I think it is the first hard data on wages paid to commuters, and it is the first step to build up the kind of information we need.

The significant findings of that study I am sure you are familiar with, but let me quickly summarize them.

Commuters are clustered in low wage occupations.

Average hourly earnings for the 25 surveyed occupations in which five or more commuters were occupied ranged from 86 cents for busboys to $2.10 for customs appraisers.

The wage most commonly paid to the surveyed commuter was $1.40 an hour.

Forty-eight percent of the workers surveyed were paid precisely that amount. That happened to be the minimum fair labor standards wage at the time the survey was taken.

Forty-eight percent of the commuters were receiving $1.40. Seventy-six percent of the commuters were receiving $1.40 or less in Laredo in January of 1968, when this survey was taken, indicating that the availability of commuters kept the wage rates closely tied to the Federal minimum, or lower where the Federal minimum did not apply.

The number of hours worked per week were quite excessive, and wages paid in service stations and other service occupations were exceedingly low.

This survey indicated that if you were to apply a concept of setting a wage standard of entrance into the United States at the prevailing wage, only 14 percent of the commuters would have been excluded.

But if you would have set the adverse-effect wage rate at the minimum then in effect, namely $1.40, that would have excluded almost 25 percent, or if the adverse effect were set at $1.60, and then it would be changed by now, but 80 percent of the commuters would have been excluded.

Senator MONDALE. What formula did you use for adverse effect, prevailing wage, minimum wage, or something else?

Mr. RUTTENBERG. Normally in setting the adverse effect wage the Department of Labor has used the concept of the prevailing wage, or the minimum wage, whichever is higher.

In terms of the entrance of temporary workers into the United States—namely, the old bracero program—at the termination of Public Law 78 permitting the entrance of foreign workers into agriculure, the Deparment of Labor did set adverse effect wages around the country which were in excess of the prevailing wage. There was no minimum applicable at the time. So it is possible that the definition is one which is at the moment at the administrative discretion of the Secretary of Labor.

There is nothing in the law that determines how one decides what adverse effect rate is.

Senator MONDALE. After stating these figures showing the depressing effect of commuter alien labor, you say that, "I think the survey may very likely put a better face on the situation than really exists."

Would you say what you mean by that?

Mr. RUTTENBERG. Yes.

The fact that the Federal minimum wage is the wage most frequently reported indicates a certain degree of caution in the employers' and employees' responses. As a matter of fact, the disparity in living conditions on opposite sides of the border permits the green carder who enters the United States to accept a much lower wage than the resident of the United States would, and, therefore, employers tend to do just what the law requires them to do if the minimum applies, because there is an adequate supply of labor, large unemployment and, as I indicated earlier, the wages are substantially lower on the border than they are as you move north.

Senator MONDALE. Why would an employer in using alien commuters pay them less than a minimum wage?

Mr. RUTTENBERG. First, there are two situations. Certain occupations on the border aren't covered by the minimum wage, and, therefore, the $1.40 at that point didn't apply—service stations and so forth, and restaurants, service establishments generally were not covered at the $1.40 rate.

Agricultural farm labor was obviously not covered either, except at the large farms, and at that time I think it was $1. It was $1.15 in February of 1968. So that first of all in those establishments that are not covered, obviously the employer pays as little as he can, and in those who are covered, he tends to pay the minimum wage, and yet many of the employers on the border were found to be violating the minimum wage law.

As I say in my statement, even at 50 cents an hour, a green carder working in the United States can earn two to four times what he can earn working all day on the Mexican side of the border.

I think probably as insidious a problem that there is in relation to the alien commuter is the fact that they do tend to come into the United States and work in situations in which there is a strike. We tried, the Department of Labor, Secretary Wirtz and myself, tried for a long time to close that loophole on those individuals who commute and who continue to work in situations where a labor dispute exists, and in June of 1967, about 2 years ago, we were successful in urging the INS to adopt a regulation.

The Attorney General did then put out a regulation governing the use of green card commuters in labor disputes, but the regulation did not contain two very key facets which the Secretary of Labor had urged; namely, that no green card commuter be permitted to work in a situation in which a labor dispute had been declared.

That was completely rejected by the Immigration Service and the Attorney General, and instead they put in a very restrictive clause which said that no commuter can work in a strike situation after the Secretary of Labor has certified that a labor dispute exists.

Senator MONDALE. Under that regulation, had the green card commuter been hired in anticipation of a strike, that is proper, but if you hire them after, it is not?

Mr. RUTTENBERG. That is right.

If they hired them after the strike, but before the Secretary of Labor certified the dispute, and it takes a few days to do it, he would still be regularly employed.

Senator MONDALE. So the sequence would go like this.

The farmworkers call a strike. The workers immediately come out of the field. The next morning they are replaced by green card alien commuters. Two days later, the Secretary of Labor, moving as quickly as he can, certifies a labor dispute, but under the regulations, the green carders that have been brought up from the border don't comply because they were hired prior to the certification.

Mr. RUTTENBERG. Precisely.

Another important problem in terms of enforcement is that if the Immigration Service really wants to try to enforce the regulation, they are not able, really, to do so, because there is no way to tell a green carder is a commuter or a resident of the United States. Nor is there any way to tell, if he is a commuter, when he last crossed the border. The regulation is quite specific, and as later interpreted, if you crossed the border after the date of the strike, went to work someplace else and then came to the strike-bound establishment, you would be theoretically excluded from employment in the strike situation. But there is no way to prove whether or not that individual crossed the border the day the strike started or before or after the strike started.

So the enforcement is almost impossible.

Senator MONDALE. The operative impact of the regulation is determined when they crossed the border?

Mr. RUTTENBERG. Yes, when they last crossed the border and resided in the United States. That information is not available on the green card. All the man does when he crosses is to show his green card and go on through.

Senator MONDALE. One question that I was asked to put to you is: Can you tell us how the Labor Department certifies labor disputes? What kind of evidence do you have, and what kind of efforts are required by the Department prior to your certification of a labor dispute?

In other words, some would say that the certification is flimsy, quick, on an administrative basis, and others claim it is a little more thorough than that.

Mr. RUTTENBERG. It is based upon information that determines the number of individuals who have previously been in the employ of the affected employer, and who now are not employed or working with that employer, and who are engaged in picketing or in a labor dispute.

We do not and did not certify labor disputes until we had such evidence that there were workers who had previously worked on the job who were now outside of the establishment and not working in the establishment.

That sometimes takes time, and that is one of the reasons why the strike will occur at one point in time and the certification by the Secretary of Labor is much later.

Now, there is a problem as to whether or not a State agency, a State employment security agency, or State employment service office has a right to decertify or a right to disagree with the determination by the Secretary, and we maintain, Secretary Wirtz maintained the position that the determination of where and when a labor dispute exists would be made by the Federal Government and not by the State government.

Mr. MITTELMAN. Is there any particular number of employees or percentage of employees who were no longer working required in order for you to certify a labor dispute?

Mr. RUTTENBERG. I don't just off hand recall precisely what the formula was. It is in writing, and it is very clear as to what it is, and that we can get and give you for the record.

Mr. MITTELMAN. I take it you would visit a grower, or establishment and check the employment records of the employer to verify who was working and who was not, the day before and the day after the dispute allegedly began?

Mr. RUTTENBERG. Well, on-site visits were made and employer records were checked in most instances. Affidavits are obtained from individual workers that they were employed in this establishment and are now not employed, and are on strike, and intend to return to work with the same employer when the strike is settled.

As a matter of fact, we made, in terms of continuation of a certification various investigations to secure such evidence.

Mr. MITTELMAN. When Mr. Hennessy was here yesterday from the Immigration and Naturalization Service, I asked him why the Service couldn't put a simple date stamp machine on the border which would register the time, place and date of the border crossing, so that the problem you raised a moment ago could be solved by looking at the green card.

Mr. Hennessy took the position that because of the number of border crossings this was very complicated, and that apparently the equipment didn't exist at reasonable cost that could do this job.

I said yesterday, and I haven't changed my mind, that this struck me as odd since all that is really required is a timeclock, or a slight modification of the timeclock.

I wonder if, during your tenure in the Labor Department you explored this question with INS, and could throw any further light on why it has so far proven impossible to get any such system established for these border crossings?

Mr. RUTTENBERG. We did, in terms of the November–December survey of 1967 that was done by INS, agree that every border crosser would have his green card stamped with a grommet so that you could look at the green card and determine whether or not he was a commuter or whether he was a resident in the United States. That was the theory.

But everybody wasn't included in that, because they handled only the daily commuter, and not those who were crossing and were not going to return that night. They tended to pick up the card in the morning and return it to the man at night, and in the meantime stamp it.

I think there are all kinds of administrative problems in terms of putting a date on the card, because if you are crossing every day it is not going to be very long before you have got so many dates on the card that you will be stamping over the top of it, but I think certainly some way, some means has to be found—I think, as I will point out here in a moment—I think the best way to handle the problem is to abolish the commuter system.

But if you don't abolish the commuter system, I think there has to be some way and means found to make sure that everybody who crosses the border and who is an alien commuter, that his card is different from everybody else's, so quickly you know whether he is a resident or a commuter; and second, you have to give him something to carry with him that identifies him as a commuter.

It wouldn't be very difficult for you to have a piece of paper or another card each day which you give him, which has this date stamped on it, and some way that couldn't be duplicated or counterfeited by other people, rather than stamping the date right on the card.

There are ways and means that can be found that ought to be explored if we do not go the whole way of doing away with the commuter system.

Mr. MITTELMAN. When I was a resident of New York about 2½ years ago, I had the dubious joy of riding on the Long Island Railroad, with 80,000 commuters each day, and they handled, really, the same sort of problem.

Each month they sold each commuter a ticket which was punched each day. It had 31 marks on it, numbered 1 to 31, and you got on the train and the conductor punched your ticket.

I just can't see that it is so complicated, particularly once you have identified these people, to issue them tickets of this kind, which they would have to exchange once the ticket was all punched out.

Mr. RUTTENBERG. I agree. As far as the Immigration Service is concerned, it is an additional bit of work, and it does cost money. The Government, of course, would have to bear the cost and burden of it, but I don't think that is the significant fact in relation to being able to identify the commuter and when he crossed the border.

Mr. MITTELMAN. Have any of the labor dispute certifications that have been issued by the department been attacked in the courts?

Mr. RUTTENBERG. Been attacked in the courts?

I am not sure whether they have been attacked in the courts. I do know that the State of California assumed the right to decertify certain situations in which the Secretary of Labor had certified a labor dispute, and were therefore in violation of the Federal-State regulation which says that State agencies cannot refer individuals to situations where strikes exist, and that there was a dispute between the Federal Government and the State of California. That was pending as I left office.

I am not sure whether that situation as such would have ever gotten to court. It would have moved through the procedures in the regulations relating to the State of California violating a Federal regulation.

But whether the strike as such got into the courts, I don't know. The issue of the enforcement of the strike regulation did, as you know, get into court with an injunction by the Guimarra farm, but I am not familiar with whether there is a court case on the authority—you mean on the authority of the Secretary of Labor to certify labor disputes and the procedure used in challenging a dispute in the court by a grower or employer?

If there are, I am not aware of them.

Mr. MITTELMAN. Is the information upon which the Department issues a certification a matter of public record?

Mr. RUTTENBERG. I think under the Public Disclosure Act, it has to be, doesn't it?

Mr. MITTELMAN. I don't think it has been made public as such, but if it were asked for it would have to be provided.

Mr. RUTTENBERG. I think there are three alternative solutions I would like to go through as to how one might handle the commuter problem.

The first is to abolish the commuter system altogether, and to treat all immigrants the same.

In order to do this, I would suggest that as of a certain date all new visas issued for immigrants into the United States require that that person establish and maintain a bona fide residence in the United States.

Second, that we ought to have a new form of border crossing card. Dick Scammon, who was chairman of the Western Hemisphere Select Commission, said that we should have a polka dot card, and that polka dot card ought to identify quickly the individual who is being, or who is crossing the border on a temporary basis.

I think a new form of border crossing authorization card should be established, and it should be designed for noncitizens who do not intend to become ordinary citizens, but who wish to work in the United States and do continue to reside in contiguous territory.

This would mean that we would have to adopt a new provision of the immigration laws establishing a temporary worker class, and a temporary worker would then be required to meet the same employment requirements as other immigrants every 6 months, or periodically.

I would trust every 6 months would be the period.

I don't think you can abolish the commuter system immediately. I would urge that it be done, but that a grace period be established, and it probably ought to be 2 years after which we say that no longer can anybody who has been commuting continue the practice.

He either has to make the decision to reside in the United States or reside in the contiguous territory. If he decides to reside in the contiguous territory, and he uses his visa, he would have to apply for the polka dot card. We would have to satisfy ourselves that there was no adverse effect on the standards of working conditions in the United States, and that there were no available resident workers to fill the jobs in question.

I think, as I said, this kind of a certification for a noncitizen temporary worker ought to be reviewed every 6 months, and obviously no certification of temporary workers shall be given in any strike situation.

As I say, I think it woud be very difficult to abolish, to do away overnight with the commuter system, but I think it ought to be done within a period of 2 years.

Mr. Scammon was in agreement in principle with these recommendations which I made here. He thought, however, that the grace period for eliminating commuters ought to be longer than the 2-year period I proposed, and he suggested probably 10 years.

He also suggested that in terms of determining the adverse effect conditions for the temporary worker permit that would be issued, that this ought to be done by a board, of which a public member was an impartial chairman. I suggested that I thought it ought to be done by the Department of Labor, which was doing the same kind of adverse effect determinations under the Immigration and Nationality Act of 1965.

Abolishing the commuter system would be best, but if we can't do that, then I think we have to take the necessary steps to control the issue.

As the immigration law now stands, new immigrants coming into the United States from the countries in the Western Hemisphere need labor certifications, and the Secretary of Labor makes that certification on the basis of the adverse effect upon wages and the availability of U.S. workers.

I believe we can and should extend this condition to the green carder, and that his status should be subject to administrative review every 6 months.

I think this can be done by administrative decision. No commuter should be allowed to take a job that adversely affects U.S. workers, or where there is a U.S. resident available for that job.

To control these standards, to carry out these standards, a control system could be established to give the commuter a special card, different from that of the ordinary resident alien. You could use the polkadot card here for the individual who is a commuter alien.

It was the position of Secretary Wirtz and myself, and backed by the Solicitor of the Department of Labor, that this could be done administratively by the Federal Government if they so chose.

The Attorney General and the Justice Department disagreed with that, and, therefore, there was no effective regulation issued during our stay in office, although the very inadequate regulation to stop the use of commuters in strike situations was adopted in June of 1967.

The third alternative, therefore, accepts the necessity for legal action, a reluctant acceptance. It is based on the suspicion that this administration will be even harder to convince on the appropriateness of administrative measures than the last one was.

Senator Kennedy's bill, and others who have joined him on it, implies acceptance of the Department of Justice position, and gives recognition to the green card system. But if the administration won't take administrative action, and if we cannot abolish and do away with the commuter system, then I would favor a third alternative, the Kennedy bill.

It is a simple bill, requiring certification every 6 months that the employment of the green carder will not adversely affect wages and working conditions of U.S. workers. That bill is now before the Senate committee.

Mr. Chairman, I think that summarizes most of what I would want to say this morning, and I would be happy to respond to any further questions you or Senator Yarborough may have.

Senator MONDALE. Thank you, Mr. Ruttenberg, for some very useful insights.

Senator Yarborough?

Senator YARBOROUGH. Mr. Chairman, I had the privilege of testifying before this Commission, and I want to congratulate Mr. Ruttenberg on the great service he rendered in that. I am glad to have his recommendation here.

The green card situation is pulling down the wages and standard of living along the southern border of this country from Texas to San Diego, Calif. The people who are hurt most and who most bitterly resent it, are the Americans of Mexican extraction.

They are hurt most by people coming over with green cards and working and going back to the other side of the river where their taxes aren't as high, and they work in the American economy and live on the Mexican economy. They have almost the best of all possible worlds.

Did you in your hearings go into the question of how many students cross from Mexico to go to schools in the United States?

Mr. RUTTENBERG. We didn't go into it, but there was testimony that there are a significant number of the children of families living on the Mexican side who do go to school on the American side, and they pay a slight fee for that.

In other places they don't pay a fee, but school boards do in some of the areas permit that to happen.

Senator YARBOROUGH. We, of course, are not averse to education of those children, but that is one other complaint that the American workers, primarily of Mexican-American extraction, make to me, that they come over with the green cards and get our jobs, we have to pay taxes on our homes, the children go to our schools, they go back and live on the Mexican side and pay no taxes to support all these things, and we are out of jobs.

So the green card situation weighs most heavily against the Mexican-American population of the southern border area of our country, Texas, New Mexico, Arizona, and California, and we have widespread complaints that it is being used in California to worsen the plight of the farmworkers to keep them from effectively organizing.

Those are all the questions I have at this time.

Mr. RUTTENBERG. I am sure, Senator Yarborough, that you are familiar with a fact that relates to your State, namely that wages for seasonal farmworkers were 30 percent lower in the border areas of Texas than in other areas of Texas.

Senator YARBOROUGH. Yes, and wages generally, until we got the Federal minimum wage law.

Texas has no such law. The Federal minimum wage law for the first time brought farmworkers under protection, if there are more than seven working on the farm, and applied to hotels, laundries, and many other service trades.

Mr. RUTTENBERG. It applied only to large farms, and it set a minimum that was lower than the $1.60, but it does go up.

Senator YARBOROUGH. Yes.

That includes most of the hired farmworkers. It applies to only 2 percent of the farms in the country, or 1.6 percent, but it applies to more than 40 percent of the people who work on the farms, because three-fourths of the farms in this country hire no outside labor.

The operating farms of American, they and their wives and children and relatives do all the work.

When you come to massive hirings, the minimum wage law that the Congress passed does cover all the big employers.

Mr. RUTTENBERG. It would help if the State of Texas would enact a minimum wage law of its own.

Senator YARBOROUGH. For the first time in history there is a possibility of that. A bill has been passed by the House and by the Senate in Texas. There is a deadlock, and the session expires next week.

I feel it is just a question of a short time now until the State will have a minimum wage law, but unfortunately in the past the sole protection of the workers came from the Federal minimum wage law.

Texas is one of the 13 States that does not have a minimum wage law.

I want to congratulate this committee that went into the green card situation. I am in accord with the Kennedy bill, and want to change those situations that are pulling down the employment and income and status of the Mexican-American part of our population in the Southwestern part of the United States.

Thank you, Mr. Chairman.

Senator MONDALE. As I understand your testimony, Mr. Ruttenberg, you are saying in effect that present regulations and restrictions are so technical and inadequate that for all practical purposes the Mexican can freely commute across the border on a daily or seasonal basis, find employment that depresses living and working conditions in the United States, and be used to freely break strikes where they are called, and thus the U.S. citizen worker, or the resident alien worker, is in one of the worst circumstances of any worker in our country because of the virtually inexhaustible supply of workers who come across the border.

Would that be fair and accurate as an analysis.

Mr. RUTTENBERG. Yes; I think that is a fair statement, Senator Mondale. There is nothing in the regulations at all that prevents an alien commuter from continuing to reside in Mexico, except two items:

1. If that alien commuter is unemployed and doesn't cross the border for a 6-month period, he has to apply again.

Senator MONDALE. That is not enforced.

Mr. RUTTENBERG. Right.

And 2, the certification dealing with a labor dispute is so weak and has so many loopholes in it, plus the decision of the judge in the court in California involving the Gumarra farms and the Immigration Service, that the present regulation is almost unenforcible, and is not really an adequate provision to handle the situation.

Senator MONDALE. We have heard comments that green carders who are nonresidents are not widely used in labor disputes of farmworkers in Texas and California, particularly in California.

Would you care to speculate on that?

Mr. RUTTENBERG. Are not widely used?

Senator MONDALE. Yes.

Mr. RUTTENBERG. Well, I think that is a matter of judgment. We do not actually have the data. I was sufficiently convinced by the information that was made available to me by the United Farm Workers Organizing Committee in the California vineyard situation that there was a significant number of individuals who were working in those vineyards who were alien commuters, who did cross the border after the date the strike was certified. But the Immigration Service, and particularly the court decision, so broadened the definition of what constitutes an individual who resides in the United States that it was just impossible to enforce the regulation and to determine whether or not the workers in the vineyards were commuters.

Senator MONDALE. The way the regulation was finally developed, it is like looking for a needle in a haystack, because it ignores the haystack.

Mr. RUTTENBERG. Well, the haystack outside the strike situation, obviously.

Senator MONDALE. Yes.

Because if the regulation were of a simple kind such as you propose, namely a work prohibition of nonresident aliens in a strike situation, it would be prohibited as an administrative matter, but the way the regulation was finally determined it was so technical that you had to be pretty foolish to come within its restrictions.

Is that conclusion correct?

Mr. RUTTENBERG. That is right.

After the regulation was issued by the Department of Justice, Secretary Wirtz wrote a letter to the Attorney General Ramsey Clark, saying that we still face the problem of adverse economic impact due to the availability of commuters who will work for substandard wages and under substandard working conditions, and that letter goes on to say that the regulation doesn't deal with that.

The regulation dealt only with the strike situation, and there it was inadequate and didn't accept the recommendations that were made by the Secretary of Labor.

Senator MONDALE. We have had testimony here by representatives of the farmworkers that they have repeatedly tried to call a strike at a farm in California. They have clear evidence that they have a majority of the membership.

When they call a strike, most of the workers leave, only to find the next morning that all those jobs, and more, have been replaced by Mexican aliens who were brought up by bus and brought into the farm the next morning.

In your opinion, is there ever going to be much hope for strong unions in this situation unless something is done to correct the border problem by eliminating the use of nonresident aliens for strikebreaking? Wouldn't this give to the farmworkers of this country something nearly analogous to the power enjoyed by virtually every other employee in management-labor relations in this country?

Mr. RUTTENBERG. I think that is obviously true. You would have to go one step further, which I understand Congressman O'Hara talked about yesterday, and on which bills have been introduced, but I want to mention it.

There will be little organization, or successful organization of farmworkers in the agricultural area unless they also have the right to collective bargaining similar to that now exercised or now available to other workers under the National Labor Relations Act.

Senator MONDALE. Some proposals have been made that a new section be added to the National Labor Relations Act to make it an unfair labor practice to use nonresident aliens in any strike or labor dispute, and to give to the aggrieved party a remedy of discovery and of injunction to prevent their use in a particular labor dispute.

This wasn't included in any of your suggestions, and I can understand why. How does that proposal look to you?

Mr. RUTTENBERG. I have no—well, let me put it this way, Senator. I agree that we ought to have a regulation at least as a minimum that prevents the use of alien commuters in strike situations, and that no alien commuter, regardless of when he crossed the border, should be permitted to work in a strike situation. We ought to have that kind of a regulation.

We have the authority. It resides in the Federal Government in the administrative branch to adopt such administrative ruling. If they do not, and this administration, I am convinced, probably will not, if we could not get the past administration to do it, then, I think we ought to have legislation on the subject. As to whether or not it ought to be part of an NLRA amendment, I just wouldn't react one way or the other.

Senator MONDALE. Where does the pressure come from that prevents the implementation of some reasonable rules here? You are now free to tell it like it is. [Laughter.]

Why can't these things be done, even under a liberal Democratic administration?

Mr. RUTTENBERG. Well, I think there was a legitimate concern in the Department of Justice over the question of whether the procedure which had tacitly been condoned by the Congress, in fact when the issue had come before them in terms of the Immigration and Nationality Act they did nothing about it, and which had grown up in practice over 40 years, was something you could just not upset and do away with by administrative action, that it does require and would require——

Senator MONDALE. I am a former Attorney General of a State. That used to be a rule that we used every time we wanted it that way, and ignored every time we didn't want it.

Mr. RUTTENBERG. Absolutely.

Senator MONDALE. It is specious, and flexible. It is saying that even though there is a bill that is less than desirable, and amendments have changed it, you can construe it to be the law; and that since nothing was done, the legislature has incorporated the law by reference.

But it is a very, very tenuous argument. It is one that you use when you want policy to come out that way, and apparently someone wanted it to come out that way.

Meanwhile, the commuters and the seasonal workers are coming across and creating an economy which is for farmworkers, at least, still a 1934 depression economy, and probably worse.

Mr. RUTTENBERG. Just to confirm what you said, Senator, the Attorney General did on two different occasions violate his own decision that you couldn't impose restrictions on the commuter system by denying commuter status to anybody who is unemployed by more than 6 months, and anybody who is engaged in a labor dispute after the Secretary of Labor certifies it.

It seems to me if he could do that he could do anything with regard to the commuter.

There is great pressure from the businesses along the border. I think if one were to go through the three volumes of the testimony before the Select Commission on this question—I was going to say that you would not find a single employer, but I take that back, because there was one grower in Yuma, Ariz., who came in and said he thought it would be a pretty good idea.

But in the main, every single business element along the border from Brownsville to El Paso to San Diego testified before the committee that changing the commuter system would create hardship on their employment.

But they made a fascinating point that was implicit in what Senator Yarborough said earlier.

They said, "If you were to abolish the commuter system, or if you were to force, under the Senator Kennedy-Senator Yarborough bill, force a recertification each month, there would be a large number of individuals who would have to reside in the United States, if they want to continue their jobs, and that that would cause tremendous hardships to the local communities in providing the public facilities, the schools and hospitals and the homes, et cetera, that would be needed to take care of these people who all of a sudden would cross the border and take up residence on the U.S. side.

I think that is one reason why probably one ought to consider the phasing out of this. Maybe this ought to be combined with some provision of Federal assistance to the local communities to meet this kind of problem.

But those were the two major arguments, the business community plus the impact upon local communities that I think played a great part in the administration's not moving forward.

Senator YARBOROUGH. Let me ask a question here.

Mr. Ruttenberg, you said there were interests opposed to the limitation of the present green card system.

In your experience, do you know of any of those interests ever supporting agriculture minimum wage law or a law to advance the interests of the workers of this country?

Mr. RUTTENBERG. Not at all, Senator.

That is a good rhetorical question.

Senator YARBOROUGH. It is the same opposition, isn't it?

Mr. RUTTENBERG. Exactly.

It is the same group.

Senator YARBOROUGH. They have opposed everything to improve the status of the workers in the United States.

Mr. RUTTENBERG. Yes; they did oppose the covering of agricultural workers under the Fair Labor Standards Act, and they will oppose every single bit of progressive legislation.

Senator YARBOROUGH. I am not including only agricultural workers. There are those who oppose improvements in the status of working people, do they not?

Mr. RUTTENBERG. That is right.

Senator MONDALE. The irony and the tragedy is that despite all the magnificent progress that we have seen in the past 35 years, for the migrant farmworker there has been no progress at all, and relatively, he has really fallen back enormously in the last 35 years. We always talk about these rules and these regulations, but here we had 8 years of a liberal administration, and a Secretary of Labor who really tried and others who really tried, and for all of the technical progress we made, the operative fact is that there still is a hemorrhage of desperately poor Mexican labor that can come across the border any time they want for commuting purposes, and for the purposes of breaking a strike, and there is a business community more than willing to use them for both purposes.

Mr. RUTTENBERG. I agree with that, Senator.

I think there is one point that one ought to keep in mind. There was a bit of progress under the last administration in terms of this issue when Public Law 78 terminated; it was a tremendous step forward, and the bracero program was brought to a halt. If my memory serves me right, when unemployment was somewhere in the neighborhood of 6½ to 7 percent, we were bring in over 350,000 Mexican workers to work temporarily in agriculture, and the last year, 1968, under Secretary Wirtz' leadership in the Department of Labor when unemployment was 3½ percent, not a single Mexican worker was admitted into the United States to work in agricultural employment.

I know the farmworkers would say, "Yes, but what got substituted for it was the commuter system."

So we did make progress in closing the door—I hope the present administration continues that policy, although they have already weakened it by permitting workers to come into the citrus industry in Florida where for the last 2 years there have been no foreign workers.

They permitted a group to come in this year. They should not have done it. There was no real justification for it.

We did not permit it in 1968, and the citrus industry got along, and didn't lose any fruit on the trees——

Senator MONDALE. Would that have been a determination by the current Secretary of Labor?

Mr. RUTTENBERG. Yes.

Senator MONDALE. I am disappointed with his administration. He came with a good deal of good will from the liberal community. Since he has arrived, he has proposed an agriculture industry collective bargaining bill which is a farce for the farmworker, which limits the right to strike. He has proposed compulsory arbitration. And, he has proposed reduced standards for labor protection in the area of occupational safety and health which are substantially less than minimal, thus exposing workers to the threat of loss of health and life.

He has virtually ignored enforcement of OFCC practices and procedures; nothing has happened in the Labor Department that I can see.

He has shown no interest in the Charleston hospital workers' strike at all. He permitted the tragic sellout of the Job Corps program, closing 59 Job Corps camps, senselessly, and cruelly. And, now, we learn that Secretary Shultz is relaxing foreign contract labor standards, and is going to tragically depress the working conditions.

I wish the new Secretary of Labor would first of all realize that we see what he is doing, and we deeply regret it, and that it is the Department of Labor, L-a-b-o-r, and he ought to think about it.

Senator YARBOROUGH. What you are saying, Mr. Chairman, is that behind that well-modulated, calm voice, and that soft glove on the hand, there is a hand of steel.

Senator MONDALE. U–S.

[Laughter.]

Mr. RUTTENBERG. Senator Mondale, perhaps you ought to also keep an eye on whether or not the Secretary of Labor relaxes the standards in terms of bringing in additional workers as the fall comes in the apple harvests, and in the late summer as the tomato and vegetable harvests in California come along.

I have known Mr. Shultz for many, many years. I have had a great admiration and respect for him, and as a matter of fact we used him on various occasions in the Department of Labor.

Secretary Wirtz appointed him chairman of the task force to study the employment service. I like to believe it is more the Republican administration than it is the Secretary of Labor who is doing these things, but I agree with you that you can't separate the two at all.

Senator MONDALE. You know, when this administration started, we had some private talks, and I said I thought Secretary Shultz would be the star of the administration and that Secretary Finch would not work out as well as had been predicted.

I would say at this point it would be the other way around.

I am told that Finch and Hardin went to the President and said, "We must have a program for hunger." They won partial victory.

I have not seen in the Department of Labor a similar desire to fight for the workers.

I deeply regret that Secretary Shultz is proceeding in this fashion.

Senator YARBOROUGH. I would say, Mr. Chairman, that I don't think we should be too harsh on the Secretary of Labor at this point, because if the Postmaster General succeeds in turning the Post Office Department into a corporation and gets his hands on the throats of those 725,000 postal workers, anything, in my opinion, that Secretary Shultz has done, or does, is going to seem very mild in comparison, based on the past history of the two men.

Senator MONDALE. There is some hope for his redemption.

Mr. RUTTENBERG. I agree with you, Senator Yarborough, that if the Postmaster General succeeds and the administration succeeds in turning the Post Office Department into a private corporation, that would be a serious mistake.

Senator YARBOROUGH. I think one should read his speech of Monday, May 5, at Houston, at the unveiling of the stamps honoring the flight of Apollo 8, where he touched on this some, and talked about the inefficiencies.

He spent most of his time talking about the inefficiency of the postal service, and made an implied threat of what was going to happen.

Just read the speech. I think it is enough to warn anybody what will happen.

Senator MONDALE. Because of the interruptions of your presentation, I shall order your remarks printed in full at this point in the record.

(The prepared statement of Mr. Ruttenberg follows:)

PREPARED STATEMENT OF STANLEY H. RUTTENBERG, FORMER ASSISTANT SECRETARY OF LABOR FOR MANPOWER, AND PRESIDENT OF STANLEY H. RUTTENBERG AND ASSOCIATES, INC., WASHINGTON, D.C.

Mr. Chairman and members of the subcommittee, whenever, during the past several years, I came up here on the Hill to testify in my official capacity as Assistant Secretary of Labor, I could always preface my remarks with an account of the most recent accomplishments of the Manpower Administration before going on to ask for additional authority, or money to get on with the list of things as yet undone. But I cannot do that today from my present vantage point outside the government. I could not do it even if I were still Manpower Administrator. Because when it comes to the problem of the alien commuters, hardly anything has been accomplished—and this in spite of a strong effort in the Department of Labor to move ahead on this question. The problem of the alien commuters remains the same complex and vexing issue it was when I first took office in 1965.

Since much of the background information on the historical development of the commuter system has been made available to the public and to this Committee through the Report of the Select Commission on Western Hemisphere Immigration issued last January, I will only sketch briefly the salient points concerning the commuter system as it now exists.

THE COMMUTER SYSTEM

Alien commuters or green carders are those aliens who have been lawfully accorded the privilege of residing in the United States, but who choose to maintain a domicile in foreign contiguous territory—Mexico and Canada—and commute to their place of employment in the United States. The alien commuter system is based on an administrative determination made by the Department of Justice more than forty years ago, in April 1927. There is no precise category for commuter workers in the immigration laws. Since 1963, the admission of new immigrants from Mexico has been adequately controlled, first by an administrative procedure and then with the Labor certification procedure of the amended Immigration and Nationality Act. In order to maintain his immigrant status, under the administrative practice of the Immigration and Naturalization Service, the commuter must have a job in the United States. If he is out of employment for more than six months, he is deemed to have abandoned his commuter status and must apply for reentry.

THE PROBLEM

No one is sure what the exact extent of the commuter problem is, but a count conducted by the Immigration and Naturalization Service at crossing points along the Mexican border in late 1967 turned up approximately 40,000 green carders. This survey related only to the daily commuters. Individuals who live in Mexico but come into the United States for a week or a month, or maybe even a season, were not included in the survey. The number of Mexican nationals who have families or homes in Mexico but who work a major part of the year in the United States has been estimated at 100,000 or more.

The problem created by this large non-resident work force is focussed on two issues:

the adverse effect on wages and working conditions of U.S. workers in the border areas, and

the use of alien commuters or green carders as strike breakers.

The generally accepted recognition that unrestricted admission of green carders adversely affects working conditions and wages of U.S. workers is backed by convincing evidence. According to occupational surveys, the Mexican alien commuters work primarily in the least skilled jobs, where the impact they exert affects most directly the U.S. workers who are most disadvantaged. In our towns on the Mexican border, the wage rates are much lower and unemployment much higher than in other cities away from the border.

A Department of Labor study in 1967 showed that:

the unemployment rate in Texas border towns was almost double that for other parts of the State, and it decreased in direct relation to distance from the border.

wage rates for seasonal farm work were about 30% lower in the border areas of Texas than elsewhere in the State.

over 20% of the minimum wage underpayments found by Labor Department investigators in Texas, New Mexico, Arizona and California were found in border counties of these States containing only about 6% of the nonfarm employment.

In January 1968, the Department of Labor conducted a special employment and wage survey of establishments that employed commuters in the Laredo, Texas area. This survey which produced the first hard data on wages paid to commuters is an important first step in building up the kind of information we need to more clearly define the commuter problem. The significant findings of the study were that:

Commuters are clustered in the low wage occupations.

Average hourly earnings for the 25 surveyed occupations in which five or more commuters were employed ranged from $.81 for busboys and $.86 for service station attendants to $2.10 for customs appraisers.

The wage most commonly paid to surveyed commuters was $1.40 an hour. 48% of the workers surveyed were paid precisely that amount—the minimum at the time of the survey.

76% of the commuters were receiving $1.40 or less—indicating that the availability of commuters kept the wage rate closely tied to the minimum or lower where the federal minimum did not apply.

In one cosmetics and dry goods store, the employees, half of whom were commuters, worked a 64 hour workweek, at hourly wage rates from 47 cents to a high of 94 cents.

Service station attendants are paid on a weekly basis and make from $35 to $45 a week. They work from 45 to 54 hours a week averaging between 65¢ and 75¢ an hour. Commuters and resident workers are paid the same.

According to the Laredo Survey, if a federal wage condition had been imposed on the commuters, a wage standard set at the prevailing rate would have eliminated 14% of the commuters, one set at the federal minimum of $1.40 would have eliminated 24.8% of the commuters, and one set at slightly above the minimum or $1.60 would have meant that 80% of the commuters would not have been able to enter the U.S. to work.

I think the survey may very likely put a better face on the situation than really exists. The fact that the federal minimum is the most frequently reported wage indicates a certain degree of caution in employer and employee responses. The fact is that as long as the disparity in living standards continues on opposite sides of the border, green carders will continue to enter the U.S. to accept work at wages lower than U.S. workers can accept. Even at 50¢ an hour, a green carder working in the U.S. can earn from two to four times what he can earn working all day on the Mexican side.

Perhaps even more insidious and more damaging to the welfare of United States workers than the wage has been the use of green carders as strike breakers. In June 1967, almost two years ago, we were successful in persuading the INS that the regulations governing the employment of immigrants should be strengthened to specifically prohibit their employment in a labor dispute situation. The regulation states that the green card or I–151 shall be invalid if the alien uses it to obtain employment at a place where the Secretary has determined that a labor dispute exists. Unforunately, the regulation has not proved effective because of the time lag between the time a labor dispute starts and the time when it is certified by the Secretary of Labor. In the interim, there is nothing to stop an employer from filling up his work force with green carders who then, in effect, become strike breakers. The regulation is also defective in that it does not prohibit a green carder who was working before the date the strike began from continuing to work. Obviously the green carder, with no stake in the improvement of working conditions in the United States, has not much to lose, and is an easy prey for those who would recruit scab labor.

Secretary of Labor Wirtz tried to prevent these loopholes from being written into the regulation but the INS and the Department of Justice insisted that this was as far as they would go.

ALTERNATIVE SOLUTIONS

It seems to me that there are three possible solutions to the problems of the alien commuter.

1. The first, and I believe preferable, alternative is to abolish the commuter system altogether and to treat all immigrants the same. I would recommend that:

> as of a certain date all visas issued for immigration into the United States be firmly understood to include a clear commitment by those immigrating to establish and maintain their bona fide residence within the United States.
>
> a new form of border crossing authorization be established designed for use by non-citizens who do not intend to become immigrants in the ordinary sense, but who wish to work in the U.S. and continue to reside in their own contiguous territory country.
>
> with a grace period, action should be taken to terminate the commuter status of the present green card holders.

It is necessary to recognize the special situation of the border area, and the interrelation of the economies of the towns and cities in that area. We would, of course, want to assure the continued friendly relationship with our neighbor countries and to promote the free flow of people between countries.

The problem is not so much that workers go back and forth between Mexico and the United States. It is that the Mexican, because of the fact that he is not protected by our laws, is liable to exploitation when he works in the U.S. to his own detriment as well as to the detriment of the U.S. worker. I would propose a work permit system that would impose the same conditions for the non-resident alien worker for entrance to the United States that now exist for regular immigrants. Such a work permit should be issued only under conditions which do not adversely affect standards of wages, hours, and working conditions in the United States and under circumstances in which resident workers are not available to fill the jobs in question.Furthermore, I think that such permits should not be issued on a permanent basis, but should be reviewed from time to time, at least once every six months, to ensure that conditions of their issuance are being observed. Such permits obviously should not be used or no new ones issued if the individual is going to work where it has been certified by the Secretary of Labor that a labor dispute exists.

It should not be necessary to say this, but because of the difficulty that the INS now has in enforcing present regulations, the work permit must be stamped or marked in such a way at the time of each review that there is no question as to the date of entry of the nonresident alien.

I fully recognize that the green card system cannot be abolished overnight and for that reason there must be a grace period before the commuter status is finally terminated. I believe this period should not be more than two years.

2. If it were not possible to abolish the commuter system, then I think we must take the necessary steps to control its abuse. As the Immigration law now stands, immigrants coming to the United States from the countries in the western hemisphere need labor certification—that is, the Secretary of Labor must certify that the job that they will take will not adversely affect the wages and working conditions of U.S. workers similarly employed. But "green carders," since they have already been admitted for permanent residence, need not have labor certification.

I believe we can and should extend this condition to the green carder, and that his status should be subjected to administrative review every six months. No commuter should be allowed to take a job that adversely affects U.S. workers.

To carry out these standards, a control system could be established to give the commuter a special card different from that held by the ordinary resident alien, and which would be marked each time the administrative review resulted in renewal of the alien's commuter status. If the review indicated that the worker was working in a job at a wage which adversely affected U.S. workers and no U.S. resident workers are available, his commuter status would be revoked, and he would not be able to continue to work in the U.S.

It was my position and that of Secretary Wirtz, backed by the Solicitor of the Department of Labor in the previous Administration, that since the commuter system has no basis in law, but was the result of an administrative practice, then conditions for the continuance of the system could be imposed administratively. However, the Department of Justice did not agree and took the position that the fact that the system had existed for more than forty years gave it the force of law, so that conditions could not be imposed without legal action.

Unfortunately, the Department of Labor was never able to sway the Justice Department, even though Secretary Wirtz and I both tried repeatedly for several years.

3. The third alternative, therefore, accepts the necessity for legal action; a reluctant acceptance that is based on the suspicion that this Administration will be even harder to convince on the appropriateness of administrative measures than the last one. Senator Kennedy's bill on the commuter system (S. 1694) accepts the Department of Justice position and gives legal recognition to the green card system. If we cannot impose a labor certification procedure by administrative action and if a more extensive bill eliminating the commuter system were not possible, then I would favor the Kennedy bill. It is a simple bill requiring the Secretary of Labor to make a certification every six months that the employment of a green carder will not adversely affect the wages and working conditions of U.S. workers similarly employed. I understand that the Kennedy bill is now before the Senate Committee on the Judiciary.

The situation in regard to the regulation on the use of green carders in employment where there is a labor dispute deserves special mention. Although the regulation of June 1967 specifically prohibits the employment of a green carder in a strike situation, the Attorney General has ruled that it applies only to those commuters who are hired after a strike begins, or the day on which the Secretary of Labor certifies that a labor dispute does in fact exist. What this means in practice is that the regulation is unenforceable, because the Immigration and Naturalization Service investigators have no way of knowing when the commuter entered the country or when he started to work. This situation should be and can be remedied immediately by a strengthened regulation which prohibits the employment of any commuter in a struck plant, regardless of the time of entry, or the beginning date of employment.

I have tried here today to outline briefly the main problems with the present alien commuter system and to suggest alternative solutions to correct the present abuses of that system. I will be glad to discuss this important matter further with you, or to answer any questions you may have.

Senator MONDALE. Thank you, very much, Mr. Ruttenberg.

Mr. RUTTENBERG. Thank you.

(The following correspondence relates to the testimony of the previous witness, Mr. Stanley H. Ruttenberg:)

U.S. SENATE,
Washington, D.C., April 7, 1969.

Hon. GEORGE P. SHULTZ,
Secretary, U.S. Department of Labor, Washington, D.C.

DEAR MR. SECRETARY: I recently received a communication from Southwest Florida indicating that there is a shortage of farm labor there.

Could you please send me information regarding the labor supply situation in Florida. I would be interested in knowing if there actually is a shortage of labor, the reasons for the shortage, if any, of labor, and the prevailing living and working conditions that might have an impact on the overall availability of labor.

If there are any question about the nature or format of the material I am requesting, your staff should contact Mr. Boren Chertkov, Counsel to the Subcommittee on Migratory Labor, Room 252, Old Senate Office Building, Washington, D.C. Phone: 225-4538.

Your immediate attention to this matter will be greatly appreciated.

Sincerely,

WALTER F. MONDALE,
Chairman, Subcommittee on Migratory Labor.

IMMOKALEE, FLA., *March, 24, 1969.*

Senator WALTER F. MONDALE,
Washington, D.C.

We the growers of southwest Florida are in dire need of migratory labor. We are paying $11.00–$12.00 per eight hour day and piece work is averaging $15.00–$18.00 per day. Anxiously awaiting your reply so that we can contact 1,000–1,500 migrants who are suffering from hunger, malnutrition or social human needs. Our harvest is just beginning. Our growers need help immediately.

BYRON G. ROYALS,
President, Southwest Florida Winter Vegetable Growers Association.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 25, 1969.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: This is in response to your letter of April 7, 1969 concerning the farm labor supply in Southwest Florida.

In early April, the Florida Industrial Commission staff investigated the situation in that area because of an allegation by the President of the Southwest Florida Winter Vegetable Growers Association that growers there were in dire need of migratory labor. The vegetable labor situation is normally tight at this time of year. However, the investigators reported that labor is generally adequate to meet the needs of the growers.

The Florida Industrial Commission's monthly reports of seasonal labor employment in the Lower West Coast Agricultural Reporting Area tend to confirm this conclusion. Average employment in January, February, and March of 1969 was 9,900. In the corresponding period of previous years, average employment was 9,900 in 1968; 8,700 in 1967; 9,100 in 1966; and 9,000 in 1965. It appears that as much or more labor is employed now than in previous years, and there are no indications that this is due to increases in acreage or the kind of crops grown.

The Department of Labor will be kept informed of labor supply and demand developments in Florida and all available resources will be used to assist the employers in meeting their labor needs. However, the facilities of the employment service system can be used only to a limited extent to recruit interstate migrants for Southwest Florida because relatively few growers there provide housing which meets acceptable health and safety standards.

If I can be of further assistance, please let me know.

Sincerely,

GEORGE P. SHULTZ, *Secretary of Labor.*

[From Congressional Record, May 26, 1969, p. S 5622]

FARM LABOR SHORTAGE

Mr. HOLLAND. Mr. President, I do not believe there is one among us who is not interested in seeing that everything possible is done to eliminate hunger and malnutrition in our Nation. It is the approach to this problem where some of us may differ.

I have taken the floor on previous occasions to point up the need for a program that would disseminate information as to proper foods necessary to obtain well balanced nutritional meals. I have also strongly supported the food stamp program, the school lunch program, and I am in full sympathy with providing those in need with the necessities to sustain life.

But, Mr. President, I must call to the attention of the Senate a situation that exists, whether we like it or not, that contributes to the malnutrition, and perhaps to hunger at times, in the migrant labor area that is caused entirely by the migrants themselves. I say this, speaking of the migrant themselves. I say this, speaking of the migrant labor in Florida, which I have the honor to represent, where there is ample work for those interested in employment. As an example of this, I wish to place in the RECORD a letter I have received from a longtime friend and member of a family which has been producing fruits and vegetables since the 1880's—a family which is one of our larger growers of citrus and vegetables. This man, Hon. Randall Chase, has the high respect of all our people.

Mr. President, I ask unanimous consent to have the letter printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SANFORD, FLA., *May 22, 1969.*

Senator SPESSARD L. HOLLAND,
Washington, D.C.

DEAR SENATOR: Your news letter No. 9 of May 18th was most interesting, informative, and we certainly go along most heartily with the position you express.

The paragraph on the top of page 2, Farm Labor Bill, is most interesting and somewhat heartening. There is a real shortage of labor for harvesting crops in the State, both citrus and vegetables. In the Glades, contract labor, mostly migrant, is making from $40 to $55 a day. The turnover is about 70% daily. The high wages, of course, are the main reason for the turnover. There is lots of labor there but they only work a day or two and then they don't want any more or need any more until they have used up what they have made. The same remarks apply to other commodities, probably to a lesser degree, but it is still excessive.

Yesterday we closed down our packing house although we have 30–40,000 more boxes of oranges to gather. We have 6 crews in the field but we cannot get enough fruit picked to warrant holding the packing house crew there to handle it when it comes in, so we are going direct to the processing plant. Being primarily fresh fruit people, we dislike this tremendously, but when it costs so much to get fruit to the house and then it is costly to put it up, somewhere along the line you reach a point of no return on costs and we have just about gotten to that point for fresh fruit.

All this is known to you but I am simply writing now just as a matter of record and emphasis on the current situation.

Should there be some constructive plan we could follow during the few months ahead before we start over again on the crops, it might be some reasonable plan could be arrived at which would be helpful to the farmers, protect the public, and actually it would help some of the migrant labor, if help is possible to them. More money is not what they need.

With expressions of regard and best wishes.

Sincerely,

RANDALL CHASE.

Mr. HOLLAND. Mr. President, as Mr. Chase stated, farm labor can earn $40 to $55 a day and yet there is a daily 70-percent turnover since so many migrant workers, once being paid off at this high rate, will not work again until their money runs out.

Mr. President, as I have said before I feel it is necessary for us to help those in these United States that cannot help themselves. There are many in this category—just as there are many willing to do what they can to help themselves and endeavor to be self-sufficient. There are too many others, however, such as those referred to in Mr. Chase's letter, who lack the initiative to become self-sufficient or who prefer to "let Joe do it"—and sit back and accept the dole of the local, State, and Federal Governments so long as it is available—working only long enough to provide those extras not obtainable through the dole system. Mr. President, it is this group of people which worries me. The taxpayer—the people who must maintain steady employment—are being drained to a point of rebellion—particularly when they realize that their tax dollars are being used to support those who can help themselves but are not willing to do so.

I believe, Mr. President, it is high time that the Federal Government review the overall welfare programs, and to devise a plan whereby those who need assistance can obtain it and those who shirk their responsibilities are put on notice once and for all that they will not continue to be a drain on the taxpayer who must foot the bill.

Mr. President, another indication of what is happening to agriculture producers is shown by an article appearing in the Gainesville Sun, Thursday, May 22, 1969, entitled "Labor Shortage Bringing Watermelon Harvest Crisis." I ask unanimous consent that this article be inserted in the Record at this point.

There being no objection, the article was ordered to be printed in the Record, as follows:

LABOR SHORTAGE BRINGING WATERMELON HARVEST CRISIS

LAKELAND.—Florida, the nation's leading producer of watermelons, has reached the peak of harvest faced with a critical labor shortage in the Immokalee area although pay scales had skyrocketed.

A plea for help went out from the headquarters of the Florida Watermelon Growers and Distributors Association.

"If we aren't able to get labor into Immokalee this week, hundreds of acres of watermelons will be burned up," said Lester Faulhaber, association president.

Labor for harvesting has been progressively harder to get for the past several years, an association spokesman said, but this year brought a crisis.

Pay for the unskilled labor was increased from $2.25 to $4 an hour, the spokesman said.

Florida produces an annual average harvest of 100 million watermelons. This week is the peak of the harvest.

"Normally farmers will have 12 hours a day of harvesting," Faulhaber said, "but they have been limited to between three and four hours this season because of the severe labor shortage."

The association fired off telegrams seeking help from Agriculture Commissioner Doyle Conner and the farm labor division of the Florida State Employment Service.

Telegrams arriving at the association headquarters here described the situation in Immogalee as deplorable and critical.

One farmer reportedly gave up attempting to harvest with only 25 percent of the melons out of the fields, an association spokesman said.

NEWS RELEASE FROM THE OFFICE OF SENATOR SPESSARD L. HOLLAND (D., FLA.)

WASHINGTON, D.C., May 29, 1969.—Senator Spessard Holland (D., Fla.) today questioned the validity of testimony—as it related to the current farm labor situation in Florida—given by former Assistant Secretary of Labor Stanley Ruttenberg at a recent hearing conducted by the Senate Subcommittee on Migratory Labor.

In a letter to Senator Walter F. Mondale (D.F.L., Minn.) chairman of the subcommittee, the Florida legislator, who is the second ranking majority member of the Senate Agriculture Committee, relayed specific complaints expressed by members of the Florida Fruit and Vegetable Association as to the accuracy of Ruttenberg's testimony and requested that the letter outlining the complaints be made a part of the hearing record.

The letter, signed by James T. Duncan, Assistant Secretary of the Florida Fruit and Vegetable Association, cited the following alleged mis-statement of facts in Ruttenberg's statement as reported in wire service stories appearing in the May 23 editions of Florida newspapers:

Florida agriculture uses Mexican bracero labor

The U.S. Department of Labor has placed a ban on the certification and use of foreign supplemental workers by Florida growers

Domestic laborers have been deprived of jobs by the presence of 2,000 West Indies supplemental workers in Florida this year

The Florida domestic labor market was adequate to harvest even the current bumper citrus crop

None of the foregoing, as reported in the Florida press, is true declared Mr. Duncan in his letter to Senator Holland. With regard to the alleged surplus of domestic labor, Mr. Duncan wrote: "We respectfully request that Mr. Ruttenberg direct any farm labor he claims are so deprived to present themselves to the nearest Florida Farm Labor Office for immediate referral to United States Department of Labor approved agricultural job openings already on file at those offices."

In his letter to Chairman Mondale, Senator Holland wrote, in part: "While I have not had the opportunity to read Mr. Ruttenberg's testimony, if such testimony were as inaccurate as indicated in Mr. Duncan's letter . . . I respectfully request that (the) letter be made a part of the record of the hearings."

In replying to the Florida Fruit and Vegetable Association Senator Holland commented, "I feel it highly important that matters affecting the labor situations in Florida be correctly stated and that any distortions, particularly as given to Congressional committees responsible for recommending appropriate legislation, be corrected prior to any committee action."

U.S. SENATE,
Washington, D.C., May 29, 1969.

Hon. WALTER F. MONDALE,
Chairman, Migratory Labor Subcommittee, Senate Labor and Public Welfare Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I have received the enclosed letter dated May 26, 1969, from Mr. James T. Duncan, Assistant Secretary, Florida Fruit and Vegetable Association, regarding press releases with regard to the testimony of Mr. Stanley H. Ruttenberg, former Assistant Secretary of Labor.

While I have not had the opportunity to read Mr. Ruttenberg's testimony, if such testimony were as inaccurate as indicated in Mr. Duncan's letter to me, particularly as to the use of farm labor in the State of Florida, which I represent, I respectfully request that Mr. Duncan's letter be made a part of the record of the hearings.

Thanking you, and with kindest regards, I remain,

Yours faithfully,

SPESSARD L. HOLLAND.

Enclosures.

FLORIDA FRUIT & VEGETABLE ASSOCIATION,
Orlando, Fla., May 26, 1969.

Hon. SPESSARD L. HOLLAND,
U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATOR HOLLAND: Associated Press releases in some Florida newspapers on May 23, 1969 cite testimony by former Assistant Labor Secretary Stanley Ruttenberg before the Senate Subcommittee on Migratory Labor. Mr Ruttenberg's testimony to the Senate Subcommittee, if quoted correctly by AP, is inaccurate concerning the current Florida farm labor situation.

The members of this Association are highly critical of Mr. Ruttenberg's testimony before the Subcommittee and feel very strongly that it should be rebutted. Our feelings are being expressed both to you and to Senator Gurney.

We feel it quite important, too, that this rebuttal be given widespread publicity among news media to counteract releases which we have observed in the Jacksonville, Miami, Tampa and other newspapers. Briefly, the facts, as we see them, are as follows:

To start with, Florida uses no Mexican braceros, as was indicated by Mr. Ruttenberg. Florida uses West Indies supplemental labor only when certified by the Secretary of Labor and brought in under Immigration laws, with strict supervision by West Indies worker representatives and representatives of the Florida Farm Labor Service (a branch of the United States Department of Labor). Immigration officials are also on the scenes throughout the area of certification on almost a continual basis.

To our knowledge, there has been no ban on the use of foreign supplemental workers to Florida growers. On the contrary, Florida growers have been certified by the U.S. Department of Labor for use of supplemental foreign workers each year, continuously since prior to 1950.

In the 1966–67 season, growers were certified for use of supplemental West Indies workers in sugar cane and in the Valencia citrus harvest. In the 1967–68 season, Florida sugar cane growers were again certified for use of supplemental West Indies workers. In the spring of 1968, Florida citrus growers *chose* not to request certification for supplemental BWI workers, much to their regret. Completion of the Valencia harvest in 1968 was delayed at least three weeks due to lack of an adequate labor force, and at a considerable additional expense to the citrus industry. The realization that certification was needed came too late to prevent the costly delay.

It is based on experience in the 1968 Valencia harvest that citrus growers requested certification for supplemental BWI workers for the 1969 Valencia harvest. In addition, sugar cane growers were again certified for use of supplemental BWI workers during this past 1968–69 season.

Florida growers have by no means been *banned* from use of supplemental workers by the Department of Labor under either the Democratic or Republican Administrations during any of the past twenty years.

Florida growers have always used all qualified domestic workers available in Florida and have also recruited extensively throughout the Southeastern States, as records on file with the Farm Labor Service of the U.S. Department of Labor will reflect. Much of the labor is recruited under the Criteria Regulations of the Secretary of Labor at considerable expense to growers.

In spite of intensive and extensive recruitment by Florida growers, both through their own resources and those of the Farm Labor Service of the U.S. Department of Labor, Florida growers have been continually short of adequate domestic labor since mid-January of this year, when labor available from the Southeastern States started to dwindle as it does every year at about that time. Florida growers should have asked for certification for supplemental labor in January of this year.

Florida growers are still in a demand situation with labor needed now in harvesting citrus, watermelons, corn, tomatoes, tropical fruit, and other crops. We challenge Mr. Ruttenberg's knowledge of the current farm labor situation in Florida and his statement that local farm workers here in Florida are being deprived of jobs by the presence of 2,000 British West Indies workers.

We respectfully request that Mr. Ruttenberg direct any farm labor he claims are so deprived to present themselves to the nearest Florida Farm Labor Office for immediate referral to United States Department of Labor approved agricultural job openings already on file at those offices.

The importation of these 2,000 foreign workers in citrus was not only entirely necessary but it is now feared will not be sufficient within the period certified. Either more supplemental labor will be needed or an extension of existing certification may have to be requested.

Original estimates of the anticipated shortage of labor in citrus indicated need for 3,000 supplemental workers. However, after consultation with Department of Labor officials, citrus industry leaders reduced the request to 2,000.

Florida growers have always tried to comply with reasonable regulations of the U.S. Department of Labor, including those during the time Mr. Ruttenberg was Assistant Secretary of Labor. This they will continue to do under any Administration to assure that all available and qualified American workers are used first in Florida agriculture, before Certification for use of supplemental workers is requested.

As stated previously, we feel it is extremely important that Mr. Ruttenberg's testimony be rebutted at the Subcommittee level and that publicity be given to the rebuttal. We would appreciate your thoughts along this line and your coordination with Senator Gurney so that we get the most effective rebuttal to Mr. Ruttenberg's testimony. We feel this is necessary not only from the standpoint of correcting inaccuracies in Mr. Ruttenberg's testimony but also from the standpoint of working out satisfactory solutions to our continued Florida agricultural labor problem for the balance of this year and for future years.

We sincerely appreciate the fine job that you are doing for Florida agriculture and know that you will continue to do so.

Yours sincerely,

JAMES T. DUNCAN,
Assistant Secretary.

[From the Miami Herald, Friday, May 23, 1969]

NIXON LET FOREIGN WORKERS IN STATE; LOCAL LABOR HURT

WASHINGTON.—The Nixon Administration deprived local farm workers of jobs by letting Florida citrus growers import 2,000 foreign laborers, a Senate subcommittee was told Thursday.

Stanley Ruttenberg, an assistant labor secretary during the Johnson Administration said the importation of foreigners was unnecessary.

The Florida labor market was adequate to harvest even the current bumper citrus crop, Ruttenberg said.

He said the Nixon Administration's action last week broke a two-year ban against such braceros. Those in Florida are from the British West Indies.

Ruttenberg told the Senate subcommittee on migratory labor that he favored outright abolishment of the system by which Mexican nationals get immigration visas and use them to commute daily to farm work in the United States.

Subcommittee chairman Walter F. Mondale (D., Minn.) said he felt from his personal observation of migrants crossing into Texas at 4 a.m. daily that the system should be ended for the migrants' own protection.

They are treated badly by immigration officials, he said, and are provided no protection either by the Mexican or the U.S. governments as were persons brought in under the bracero program.

Ruttenberg estimated 100,000 Mexican nationals cross the border to work but live in Mexico.

U.S. Senate,
Washington, D.C., June 6, 1969.

Hon. Walter F. Mondale,
Chairman, Subcommittee on Migratory Labor, Senate Office Building, Washington, D.C.

Dear Senator: On Thursday, May 22, former Assistant Labor Secretary Stanley Ruttenberg testified before your Subcommittee on Migratory Labor. His testimony as reported in the Miami *Herald* as far as Florida farm workers are concerned is entirely erroneous.

Essentially, what he said was that there was sufficient domestic labor to harvest the Florida citrus crop and hence it was unnecessary for Florida citrus growers to import offshore labor.

This is the same kind of erroneous charge which was made year after year by key members of the Labor Department in the Johnson Administration as well as certain labor unions.

I am forwarding herewith a letter by James T. Duncan, the Assistant Secretary of the Florida Fruit and Vegetable Association, which accurately sets forth the Florida labor picture as far as foreign workers are concerned this year and last year as well.

There is always a severe shortage of labor in Florida when citrus and other vegetable crops come on for harvest period. If Mr. Ruttenberg would direct the sufficient supply of domestic labor that he claims to the Florida farm labor offices, he would be doing Florida farmers as well as Florida workers a great favor. This would accomplish much more than his inaccurate testimony before your Subcommittee.

Would you please file Mr. Duncan's letter as part of the hearings before your Committee?

Sincerely yours,

Edward J. Gurney, *U.S. Senator.*

Enclosure.

Florida Fruit & Vegetable Association,
Orlando, Fla., May 26, 1969.

Hon. Edward J. Gurney,
U.S. Senate, Senate Office Building, Washington, D.C.

Dear Senator Gurney: Associated Press releases in some Florida newspapers on May 23, 1969 cite testimony by former Assistant Labor Secretary Stanley Ruttenberg before the Senate Subcommittee on Migratory Labor. Mr. Ruttenberg's testimony to the Senate Subcommittee, if quoted correctly by AP, is inaccurate concerning the current Florida farm labor situation.

The members of this Association are highly critical of Mr. Ruttenberg's testimony before the Subcommittee and feel very strongly that it should be rebutted. Our feelings are being expressed both to you and to Senator Holland.

We feel it quite important, too, that this rebuttal be given widespread publicity among news media to counteract releases which we have observed in the Jacksonville, Miami, Tampa and other newspapers. Briefly, the facts, as we see them, are as follows:

To start with, Florida uses no Mexican braceros, as was indicated by Mr. Ruttenberg. Florida uses West Indies supplemental labor only when certified by the Secretary of Labor and brought in under Immigration laws, with strict supervision by West Indies worker representatives and representatives of the Florida Farm Labor Service (a branch of the United States Department of Labor). Immigration officials are also on the scenes throughout the area of certification on almost a continual basis.

To our knowledge, there has been no ban on the use of foreign supplemental workers to Florida growers. On the contrary, Florida growers have been certified by the U.S. Department of Labor for use of supplemental foreign workers each year, continuously since prior to 1950.

In the 1966–67 season, growers were certified for use of supplemental West Indies workers in sugar cane and in the Valencia citrus harvest. In the 1967–

68 season, Florida sugar cane growers were again certified for use of supplemental West Indies workers. In the spring of 1968, Florida citrus growers *chose* not to request certification for supplemental BWI workers, much to their regret. Completion of the Valencia harvest in 1968 was delayed at least three weeks due to lack of an adequate labor force, and at a considerable additional expense to the citrus industry. The realization that certification was needed came too late to prevent the costly delay.

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Florida growers have always used all qualified domestic workers available in Florida and have also recruited extensively throughout the Southeastern States, as records on file with the Farm Labor Service of the U.S. Department of Labor will reflect. Much of the labor is recruited under the Criteria Regulations of the Secretary of Labor at considerable expense to growers.

In spite of intensive and extensive recruitment by Florida growers, both through their own resources and those of the Farm Labor Service of the U.S. Department of Labor, Florida growers have been continually short of adequate domestic labor since mid-January of this year, when labor available from the Southeastern States started to dwindle as it does every year at about that time. Florida growers should have asked for certification for supplemental labor in January of this year.

Florida growers are still in a demand situation with labor needed now in harvesting citrus, watermelons, corn, tomatoes, tropical fruit, and other crops. We challenge Mr. Ruttenberg's knowledge of the current farm labor situation in Florida and his statement that local farm workers here in Florida are being deprived of jobs by the presence of 2,000 British West Indies workers.

We respectfully request that Mr. Ruttenberg direct any farm labor he claims are so deprived to present themselves to the nearest Florida Farm Labor Office for immediate referral to United States Department of Labor approved agricultural job openings already on file at those offices.

The importation of these 2,000 foreign workers in citrus was not only entirely necessary but it is now feared will not be sufficient within the period certified. Either more supplemental labor will be needed or an extension of existing certification may have to be requested.

Original estimates of the anticipated shortage of labor in citrus indicated need for 3,000 supplemental workers. However, after consultation with Department of Labor officials, citrus industry leaders reduced the request to 2,000.

Florida growers have always tried to comply with reasonable regulations of the U.S. Department of Labor, including those during the time Mr. Ruttenberg was Assistant Secretary of Labor. This they will continue to under any Administration to assure that all available and qualified American workers are used first in Florida agriculture, before certification for use of supplemental workers is requested.

As stated previously, we feel it is extremely important that Mr. Ruttenberg's testimony be rebutted at the Subcommittee level and that publicity be given to the rebuttal. We would appreciate your thoughts along this line and your coordination with Senator Holland so that we get the most effective rebuttal to Mr. Ruttenberg's testimony. We feel this is necessary not only from the standpoint of correcting inaccuracies in Mr. Ruttenberg's testimony but also from the standpoint of working out satisfactory solutions to our continued Florida agricultural labor problem for the balance of this year and for future years.

We sincerely appreciate the fine job that you are doing for Florida agriculture and know that you will continue to do so.

Yours sincerely,

JAMES T. DUNCAN, *Assistant Secretary.*

[From the Miami Herald, Friday, May 23, 1969]

NIXON LET FOREIGN WORKERS IN STATE; LOCAL LABOR HURT

WASHINGTON.—The Nixon Administration deprived local farm workers of jobs by letting Florida citrus growers import 2,000 foreign laborers, a Senate subcommittee was told Thursday.

Stanley Ruttenberg, an assistant labor secretary during the Johnson Administration, said the importation of foreigners was unnecessary.

The Florida labor market was adequate to harvest even the current bumper citrus crop, Ruttenberg said.

He said the Nixon Administration's action last week broke a two-year ban against such braceros. Those in Florida are from the British West Indies.

Ruttenberg told the Senate subcommittee on migratory labor that he favored outright abolishment of the system by which Mexican nationals get immigration visas and use them to commute daily to farm work in the United States.

Subcommittee chairman Walter F. Mondale (D., Minn.) said he felt from his personal observation of migrants crossing into Texas at 4 a.m. daily that the system should be ended for the migrants' own protection.

They are treated badly by immigration officials, he said, and are provided no protection either by the Mexican or the U.S. governments as were persons brought in under the bracero program.

Ruttenberg estimated 100,000 Mexican nationals cross the border to work but live in Mexico.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 19, 1969.

Hon. WALTER F. MONDALE,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Remarks of Senator Spessard L. Holland of Florida, as contained on page 5622 of the Congressional Record, May 26, 1969, recently came to my attention. Because of the subject matter and the "facts" as conveyed, I sent a copy to some people in Florida whom I know and who could be expected to have some expert knowledge of the subject matter.

I am sending this on to you because of your general interest in this field, your prior investigation of the migrant conditions in Florida and specific committee responsibility.

Attached is a copy of a letter sent to me by Reverend A. H. Vanden Bosche, who, as you can see, is the Southeast Representative of the National Council of the Churches of Christ and who has for several years been involved in the work of aiding migrants. In addition, I am sending a copy of a news story appearing in the Miami Herald.

Sooner or later, people like Senator Holland, and those who hold points of view which he appears to represent, need to know that so-called "labor shortages" in this nation cannot be validly evaluated in a pure numerical context but must be studied in relation to the economic and sociological ramifications. This is, of course, fancy language for saying in this age of American affluence and the existence of general living standards which exceed any ever previously developed, the availability of labor will be conditioned by how much they're paid.

Best personal regards.

As ever,

WILLIAM L. KIRCHER,
Director of Organization.

Enclosures.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.,
New York, N.Y., June 17, 1969.

Mr. WILLIAM L. KIRCHER,
Director of Organization, A.F.L.–C.I.O.,
Washington, D.C.

DEAR BILL: I welcome the opportunity to comment on the letter introduced by Senator Holland and which was written by Mr. Randall Chase. The opening phraseology of Senator Holland's remarks and the letter itself give away the position which Senator Holland holds and that held by most of the growers groups in our state of utter contempt for the laborers who have given them their affluence and their places of prestige, power and influence. There just has been nowhere near a $40–$50 a day average made by workers. There has been no real attempt to recruit workers. Attempts were put into motion early in the Fall to make a case of off shore workers and when it became definite that there would be a change in Administration and therefore of posture relative to such a situation to make a case for recruiting off-shore workers. Part of this case, as it has always been, is to take the all too infrequent highest days wages for the hardest workers and suggest that this is an average. Then one must demean the workers as irresponsible and not wanting to work. The next step is to not seriously recruit. At a meeting last week in Lake Hamilton (near Winter Haven) a large group of workers stated that there was a three week cutoff of work over a month ago when the weather was cooler and fruit was ready for harvest so that workers would leave.

The system worked and rather quietly 2000 off shore workers from Jamaica came in to the Dundee area. I visited a camp at Davenport, Florida, and gathered information that domestic workers were put out of the camp so that the Jamaicans could be moved in. Also, at a time when pickers should have been paid about 50c a box for picking oranges because the fruit was more difficult to pick, the price was kept at 35c and in some cases dropped to 30c. The off-shore workers we talked to did not know what price they were going to get, even while in the fields, and didn't know who or where their representative was to talk about problems.

Men are here, wanted to work and were unable to work. I am enclosing a clipping from yesterday's (June 16) Miami Herald which speaks to this subject. You may also secure the testimony of Newlon Lloyd made before the Subcommittee on Migratory Labor last Tuesday, June 10.

Next year will undoubtedly be much worse in making the case for offshore workers.

Sincerely,

REV. A. H. VANDEN BOSCHE,
S.E. Area Representative.

[From the Miami Herald, Friday, June 6, 1969]

DID U.S., COLLIER TALK ABOUT FOOD?

(By Elizabeth Heddericg)

WASHINGTON.—You might label it the communications gap. When you ask questions about the status of a food commodities program for Collier County, you get some very different stories.

At the time Sen. George McGovern (D., S.D.) and his hunger fighters with their pied piper entourage of pressmen visited Collier County back in March, the Office of Economic Opportunity said it would pay the administrative costs for a commodities program for Collier.

OEO and the U.S. Department of Agriculture, which runs the commodities program, both say now they have met with the county commissioners to talk over plans to take Collier off the list of 16 counties in Florida not participating in the food commodity program. However, the head of the Collier County commissioners says they have heard from neither organization.

Arnold Baker of OEO's community action migrant program, through which the program would be funded, said OEO met with Collier officials two weeks ago.

Russell H. James, director of the Atlanta regional office of USDA's commodity program said, "We had another meeting with the group down there a couple weeks ago."

But Lester Whitaker, chairman of the Collier County commissioners said this about OEO's offer for funding: "They've never given us any information on that. It was published in the papers and all, but as yet we haven't heard anything from them."

When asked if the Department of Agriculture had talked with the commissioners, Whitaker's answer was "No."

Baker of OEO said details are now being worked on. "We're kind of playing it low key," he said. "And we'd prefer not to give the information out at this point if it's going to make the papers because we feel we are almost to the point of working something out with the Agriculture Department, our office and the powers that be in Florida. We should know something within a week to 10 days."

Neill Freeman, director of the nationwide food commodity program for USDA, said, "The decision on a program rests with the county commissioners. We let them know what is available. They've had it under consideration for some time now. I don't know that they've made any decision."

Whitaker said the Collier commissioners would probably not decide on food commodities, but would consider the food stamp program "if the food stamp program is available to us."

Florida is one of seven states without food stamps, but the State Cabinet approved participation the day after McGovern's hunger tour left Florida. Two county applications—for Dade and Orange—are now being considered.

Whitaker said the commissioners felt food stamps was the better program for Collier County for several reasons. "One," he said, "it would be less expensive for the local taxpayers and the cost is being borne by the local taxpayers and Lord knows we pay enough taxes now. And it (commodities) would necessitate refrigeration and freight and distribution and so on (where the food stamp program wouldn't).

"In this county we don't have widespread hunger as was indicated by this committee of senators that came down here that had to justify their expenditure of several thousands of dollars of taxpayers' money making the investigation. They could not go back to Washington and say 'We didn't find hunger.' So we," Whitaker said, "are inclined to believe the food stamp program would make these people, the recipients, a little more responsible if they had some investment in it themselves. Food surplus commodities is a dead giveaway."

[From the Miami Herald, June 11, 1969]

FEAR, SHAME, HOPELESSNESS, HANG OVER FLORIDA MIGRANTS

(By Charles Stafford)

WASHINGTON.—A Negro who was born in a shack in an Avon Park orange grove told a Senate committee Tuesday that his people, the migrant farm workers of Florida, live in fear, shame and hopelessness.

"We live in fear, because we have been indoctrinated with it," said Elijah Boone of Pahokee. "We live in shame, because we are treated as the scum of the nation. And we live in hoplessness, for experience has shown us there is no road open to us except back to the field."

Boone, an investigator for the South Florida Migrant Legal Services, and Newlon Lloyd of Tampa, co-director of the Polk County Migrant Ministry, described the life and problems of migrant farm workers to the Senate subcommittee on migratory labor. Both are former migrants who became crew chiefs.

This was the thread of Boone's testimony:

"We are unwanted except at harvest time. No one claims us as citizens of his community or members of his society. In most communities we cannot register and vote because of residency requirements. We live in the shadow of society. Thousands of agricultural workers in Florida labor their entire lives in the fields with no hope of promotion, higher wages or better working conditions.

"Agricultural work is considered to be one of the most dangerous kinds of work in the United States, yet this kind of work is exempt from the workmen's compensation laws in Florida and in most other states. In the area from which I come, there is no such thing as equal employment opportunity.

"Labor camps containing blacks, Mexicans or Puerto Ricans breed only field workers, whereas labor camps containing caucasians breed only bosses and foremen. These camps are segregated . . .

"In the Glades area of Florida, the power structure refuses to sell land to agricultural laborers, especially black people, for use as home sites. They wish, by this and other means, to perpetuate the down-trodden condition of our people and maintain the present economic and power gap in order to insure a captive work force.

"This is evident by the lack of industry in the area. New industry would be available in our area, but those in power will not take advantage of these opportunities because it would offer competition to them in the form of higher wages and more humane working conditions. They even import foreign labor while our people go hungry in the summer and early fall . . .

"In the State of Florida," he continued, "there are many Federal, state, and local programs aimed at helping the migrant, but a great number of these programs are 'phonies.' Others are ineffective . . . The programs give away a few dollars that are supposed to satisfy its recipient, but does nothing to remove us from this vicious cycle and help to raise us up to being individuals with self-respect, pride and human dignity . . .

"More often than not these programs do not contain enough flexibility to stay where the migrant is, as he moves about over the country, harvesting the crops. So we end up with programs consisting of, in most cases, middle class individuals. receiving middle class salaries, to do a job that they either cannot or will not do, and we, again, are left without consideration."

Lloyd told of the exploitation of farm workers by their crew leaders and the growers.

When, because of scheduling delays, poor planning or equipment failures, the migrants cannot work, they are not paid. "The burden of labor waste," he said, "is placed directly upon the migrant, for the time wasted is time for which he is not reimbursed. Most of this labor waste should be blamed on the farmer himself."

[From the Palm Beach Post, June 10, 1969]

EX-FARM WORKER TELLS SENATORS MIGRANT SYSTEM IS "SLAVE LABOR"

(By Dale Pullen, Washington Bureau)

WASHINGTON.—A former migrant farm worker now living in Okeechobee told a U.S. Senate subcommittee Monday:

"Gentlemen, bad working conditions and low wages for generations have maintained a slave labor system which insures that the migrant farm worker's children will have to live the same way he did and will continue to be slaves to agriculture."

Rudollo Juarez was the first of a group of migrant or former migrant workers scheduled to apear Monday and today before the Senate Subcommittee on migratory labor, headed by U.S. Sen. Walter Mondale, D-Minnesota.

Juarez read from a prepared statement then answered committee questions, saying that he was born in Texas, was a migrant at 5 years of age and was working in the fields at the age of 6.

Following his appearance, Juarez, who works as a $90-a-week investigator for South Florida Migrant Legal Services, Inc. (SFMLS) commented to newsmen about criticism of SFMLS by U.S. Rep. Paul Rogers, West Palm Beach Democrat.

"It (SFMLS) is the only effective program able to help the vast majority of migrant farm workers . . . I don't see how Rogers can say anything . . . he never comes to the fields and many times we have waited for him to come. He didn't visit until the hunger committee visited us."

Rogers, whose 9th Congressional District includes Juarez's hometown plus three of the six counties served by SFMLS, replied Monday afternoon:

"The statements Juarez made are to be expected. He is an employee of SFMLS, which should be changed so it is supervised by bar associations."

The Office of Economic Opportunity, which has financed SFMLS for the past two years, is considering applications from both the newly formed Six County Migrant Legal Services and SFMLS for a $400,000 grant to operate for the year beginning July.

Rogers supports the six-county bid. U.S. Rep. Dante Fascell, and Claude Pepper, both Miami Democrats, support SFMLS.

Rogers said Juarez "must not have spent much time in my district or he would know that two years ago I did tour the farming programs and a year ago went specifically on a field trip to Immokalee in order to check into housing and self-help housing."

Rogers attended March hearings in Fort Myers and Immokalee conducted by the Senate Select Committee on Nutrition and Human Needs, headed by U.S. Sen. George McGovern, D-South Dakota.

Mondale, also a member of the McGovern committee, attended those hearings and at Monday's hearing recalled critical remarks of a Collier County official that migrants were "federal people" and not the responsibility of the county.

Juarez, father of seven children, whose wife "works in the fields," said this was a typical reaction of local officials to migrants with problems.

He added, however, that migrants were seeking political power and he was helping see that more registered to vote and learn about voting machines "which even I don't know how to use."

During his testimony Juarez also said.

Migrant experience with police has been "something terrible."

He did not want his children to live "this kind of life."

It is almost impossible for near illiterate migrants to change their lives.

When migrants go to employers to seek better pay, working conditions or housing, "you get one answer—if you don't like it, you know where you came from."

The State of Florida is doing very little for migrants.

Before Juarez testified, National Education Television officials showed and answered questions about a film, "What Harvest for the Reaper?"

The Rev. Arthur C. Bryant, New York Lutheran minister, described his experience with migrants in his state and told senators, "the powerlessness" of migrants is tied to their lack of coverage under the National Labor Relations Act, which leaves them "less of a citizen than other Americans."

Two other Floridians are scheduled to testify today before the subcommittee.

They are Elijah Boone, of Pahokee, director of the Glades Citizens Association in Belle Glade, and Newton Lloyd, of Opa Locka, who is associated with the Christian Migrant Ministry.

[From the Palm Beach Post, June 6, 1969]

SENATE UNIT TO HEAR SPOKESMEN FROM THREE AREA MIGRANT GROUPS

(By Dale Pullen, Washington Bureau)

WASHINGTON.—Three representatives of south Florida migrant-associated organizations are scheduled to be in Washington Monday or Tuesday to testify before the Senate subcommittee on migratory labor.

They are Rudolfo Juarez of Okeechobee, leader of the Organization of Migrants in Community Action; Elijah Boone of Pahokee, director of the Glades Citizens' Association in Belle Glade and Newlon Lloyd of Opalocka, who is associated with the Christian Migrant Ministry.

Juarez is scheduled to testify Monday and Boone and Lloyd Tuesday.

U.S. Sen. Walter Mondale, D-Minnesota, the subcommittee chairman, said the theme for the hearings will be "powerlessness among migrants and the reasons for this powerlessness."

Committee officials said they did not know who is paying the transportation cost for the migrants plus an expected six carloads from Texas, a Comanche Indian and his wife from Colorado and another migrant leader from Washington state.

All are scheduled to testify.

Monday officials of the National Education Television network also are scheduled to testify on a recent documentary they filmed called "What Harvest for the Reaper."

The subcommittee has received help in contacting the migrant leaders from the Washington-based OEO-financed Migrant Research Project.

Tom Bishop, assistant director, when asked where the money was coming from to bring these people to Washington said, "I'll never tell. We can't tell because it gets us into bad water."

Migrant Research Project received $150,000 for the current fiscal year to administer its programs.

It is supposed to distribute emergency food and medical service to migrants and, according to Bishop, received $150,000 in migrant food money during the fiscal year which ends June 30.

OKEECHOBEE, FLA., *June 20, 1969.*

Mr. BOREN CHERTKOV,
Aide to Senator Walter Mondale, Senate Office Building,
Washington, D.C.

DEAR MR. CHERKOV: I first wish to thank you for the opportunity of speaking before the Senate Subcommittee and for all the courteous help and attention I was given while in Washington.

I do not at this time wish to add everything to my statement, however, Elijah Boone, Jr., is sending an additional statement to you which I have read and with which I agree. I hope that it will be helpful in clarifying some of the contradicting statements which are made by growers and agricultural workers about labor supply and wages. It is to the growers advantage to 'create' a labor shortage right at the time his crop is at peak harvest readiness. In a very short time his fields will be overcrowded and the crop will be harvested in the shortest time possible allowing the grower to get the top prices. This period is also the time in which you will hear reports of workers earning large sums of money each day. It is not difficult to understand that with the crop at its very peak a good or even an average worker can pack a great deal of crates and make himself a good wage, however, it should just as easily follow that a crop will be quickly exhausted and that the "big money" was earned for a few days or three weeks at the most. I do not mean to say that everyone working in a field ripe for harvest makes extremely high wages, some do but most still only make an average or below average wage. With the crop harvested the workers now face an interval, sometimes as long as a month or more in which they work a few days here and there and wait for the next crop and so called labor shortage and then use what is left of their earnings to reach the next harvest.

I should explain that there is often more than one crop at a time being harvested in an area. However, migrants like everyone else specialize and follow the crops and harvest the crops that they are the best at. Even if they finish a harvest of for instance corn and celery is being harvested in the same area they would not be able to work in the celery because they are not skilled enough in celery to stay with the celery crews and would not be rehired after one days trial. The chances are that they would not even get one days trial since the celery fields would already be overcrowded with workers who specialized in celery. So, when they finish a crop in a certain area they have no choice but to seek a crop which they know and can work and then travel to it.

I do not mean to say that most workers can do nothing but either pull corn or cut celery or something like that. What I mean is that the only way to make any sort of money in field work is to be very fast and very good at what you are doing and for this reason the workers pick out a few crops and learn them as well as they can and then follow them around the country. I have heard it said that agricultural workers sometimes work for two and three farmers in a single day and that this is part of what makes it not possible for them to be included in workmens compensation and unemployment insurance. I do not believe this because I know as I have told you that the workers work the crops that they know and stay with them until there is no more work and then go on to another harvest that they know.

Please let me know if I may be of any further assistance to you in any way.

Very truly yours,

RODOLFO JAUREZ.

MEMORANDUM TO SENATOR WALTER F. MONDALE, A U.S. SENATOR FROM THE STATE OF MINNESOTA, FROM ELIJAH BOONE, JR., RE MIGRANT FARM WAGES IN FLORIDA

Since Mr. Chase's statement of record that migrants make $40.00 per day during the harvest season, I feel that someone should explain the complete situation so that statistics will not be misleading.

It is true that, in the glades area, during the peak of the corn harvest (à period of 2 to 3 weeks) it is possible for the ultra physically fit laborers to reach salaries as high as $40.00 per day. There are however, many circumstances involved. The following are a few:

1. Because sweet corn and other glades-grown crops are so perishable, they must be harvested within 2 or 3 days of maturity, there is, therefore for a short period of time, a big demand among the farmers for laborers to harvest the immediate crop. By necessity, therefore, the laborers go to the highest bidder. This prime harvest demand only last a few weeks and is no indication of local wage level.

2. If there were a constant need for a labor force in the area, there would always be enough laborers to harvest whatever crops were grown without this sudden increase in cost during the peak of the harvest: but because the type of crops grown can only be grown a certain time of year, and no other work exists at other times, it is impossible for agricultural workers to become year round citizens at a constant wage level. This can only be provided by the inclusion of some type of industry.

3. A high degree of physical stamina and strength is required of people who do the harvesting. Consequently, these people are specialist and should not be termed "common labor". A lifetime of doing the same work has trained him to a degree of speed and perfection unmatched by many other professions. His speed and skill is important to his survival because he does not have a steady means of income and does not know when he might work again, therefore, he sets a pace for himself and his crew that would be impossible to maintain for any sustained period of time. This is the reason for so many turnovers—not the size salary as Mr. Chase would have you believe.

4. In 1965 (the latest date for which statistics are available) the average migratory farm worker was only employed 82 days in farm work. Even if it were possible to make $40.00 per day for a sustained period (which is not true) he would still be below the poverty line with a family of four, according to the guidelines set by OEO.

FLORIDA STATE EMPLOYMENT SERVICE

FLORIDA FARM LABOR BULLETIN

May 1969

South Florida Summary

Crop activities declining.—Many vegetable crops are almost finished. The demand for workers is also decreasing. Many workers have moved on to other job commitments, and there are still scattered shortages in the area.

Belle Glade

Corn and celery harvest beginning to taper off.—Tomato and watermelon harvest are continuing steadily. Labor supply and demand are generally in balance.

Delray Beach-Pompano

Valencia crop in good condition.—Two citrus crews could be used.

Immokalee-Fort Myers

Citrus harvest workers needed.—Lack of approved housing continues to limit recruitment. Watermelon harvest has attracted some citrus workers.

Princeton-Homestead

Light harvest of limes continues.—Shortages continue for grove, nursery and landscape workers.

Central Florida summary

Valencia harvest continuing at peak volume.—Crew fill-ins and some crews are needed throughout the area. Vegetable harvest is on the increase, and vegetable workers and crews are also needed.

Fort Pierce

Shortages continue in citrus.—Crews and crew fill-ins are needed.

Orlando (Includes Leesburg, Sanford, and Cocoa)

Crew fill-ins needed.—Some crews can also be used. Vegetable harvest is continuing at a normal pace and is expected to increase soon.

Tampa

Tomato harvest now at peak.—Labor is in short supply due to limited housing. Citrus harvest workers are also needed as crew fill-ins.

Dundee

Crew needed for cucumber and tomato harvest.—Crew fill-ins are needed for citrus harvest. Watermelon harvest is on the upswing.

North Florida summary, Orange Heights

Scattered labor shortages.—Lack of approved housing is limiting recruitment. Harvest is active in vegetables and flowers.

Pensacola

Vegetable harvest and preharvest activities increasing.—Some labor shortages could develop in the near future.

U.S. SENATE,
Washington, D.C., May 26, 1969.

Hon. GEORGE P. SHULTZ,
Secretary of Labor, U.S. Department of Labor,
Washington, D.C.

DEAR MR. SECRETARY: It has been brought to my attention that the Department of Labor has certified the use of foreign labor to perform farmwork in Florida citrus, and for sheepherding in Texas.

As Chairman of the Migratory Labor Subcommittee, I am particularly concerned about the use of foreign workers to perform farmwork in the U.S., and I would like further information concerning this situation. I would like to know how many workers are involved, to what farms and for what crops they are being imported, and for how long a period of time they are to work. I would also like to know what the labor supply situation was to justify the admittance of foreign workers, and what wages and working conditions have been guaranteed. I would also like to know how many foreign workers have been admitted to perform farmwork over the past five years, for what crops, and to what areas or states.

Also, as it is my understanding that the use of foreign agricultural labor had been almost discontinued during the past five years. I am interested in what the policy of the Labor Department will be regarding the certification of foreign labor for the rest of this calendar year, and next year.

Your immediate attention to this matter will be greatly appreciated.

Sincerely,

WALTER F. MONDALE,
Chairman, Subcommittee on Migratory Labor.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 16, 1969.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: This is in reply to your letter of May 26 concerning the certification for use of foreign labor.

Sheepherders have not been certified for employment in Texas. However, 2,000 supplemental foreign workers were approved for the Florida citrus harvest during the period May 1 to June 30 after the employers concerned had demonstrated to the satisfaction of our Atlanta Regional Manpower Administrator that sustained recruitment efforts in accordance with departmental regulations had not been successful in meeting harvest labor requirements. Domestic recruitment efforts are being continued to assure full utilization of workers.

The following citrus harvest wage rates are being paid by employers: orange harvest 30¢ per box; grapefruit 20¢ per box; and tangerines 85¢ per box. These piece rates were designed to yield average hourly earnings of not less than $1.81 per hour. However, citrus research gathered over the past 3 years indicated average earnings were substantially higher. I am enclosing a sample copy of the job offer to all workers. Also enclosed is the history of foreign worker employment since the expiration of Public Law 78 on December 31, 1964.

There has been no change in the Department's policy regarding the certification of foreign workers for temporary employment in agriculture. Certification will continue to be made only when American workers are not available for the job offered under wages and working conditions designed to prevent adverse effect to similarly employed United States workers.

I hope the information I have provided will be helpful to you.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

Enclosures.

ATTACHMENT TO CERTIFICATION NO. REG-IV-FLA-106-69, CITRUS INDUSTRIAL COUNCIL, APR. 22, 1969

Employer	Order No.	Number of workers
Adams Packing Co	IV-FLA-425-FP-1	100
Coca Cola Co., Foods Division	IV-FLA-465-FP-11	200
Crittenden Harvest Co	IV-FLA-465-FP-34	20
Edwards Packing Co	IV-FLA-425-FP-33	60
Evans Packing Co	IV-FLA-492-FP-26	75
Florence C. G. A	IV-FLA-425-FP-17	50
Florida Food Products	IV-FLA-465-FP-58	28
Golden Gem	IV-FLA-465-FP-2	80
Haines City C.G.A	IV-FLA-425-FP-4	100
Hood, H. P. & Son	IV-FLA-492-FP-37	28
Inland Fruit Co	IV-FLA-465-FP-39	46
L. & M. Fruit Co	IV-FLA-425-FP-12	30
McElveen & McElveen	IV-FLA-492-FP-21	6
Miles Fruit Co	IV-FLA-492-FP-22	44
Mount Dora Growers	IV-FLA-465-FP-50	34
Oakley Groves	IV-FLA-492-FP-17	40
Ridge Citrus Concentrate	IV-FLA-425-FP-30	68
Sebring Packing Co	IV-FLA-425-FP-29	28
Slough Groves	IV-FLA-492-FP-27	18
Tiner, J. H. & Sons	IV-FLA-425-FP-8	20
West Coast Growers	IV-FLA-492-FP-1	200

Note: Period of use, May 1 to June 30, 1969.

ATTACHMENT TO CERTIFICATION NO. REG-IV-FLA-104-69, FLORIDA FRUIT AND VEGETABLE ASSOCIATION APR. 22, 1969

Employer	Order No.	Number of workers
Clark, W. H. Fruit Co	IV-FLA-492-FP-2	70
Coca Cola Co., Foods Division	IV-FLA-465-FP-12	100
Cook, B. C. & Sons	IV-FLA-425-FP-5	170
D'Albora, J. V	IV-FLA-465-FP-38	8
Deerfield Groves	IV-FLA-432-FP-6	12
Digiorgio Fruit Co	IV-FLA-432-FP-2	25
Dundee Ctirus Growers Association	IV-FLA-425-FP-2	40
Fort Pierce Growers	IV-FLA 432-FP-13	40
Fruit Contractors, Inc	IV-FLA-432-FP-14	20
Graves Bros	IV-FLA-432-FP-8	20
Heller Bros	IV-FLA-465-FP-25	40
Lake Region Packing Co	IV-FLA-465-FP-29	64
Mims Citrus Growers Association	IV-FLA-465-FP-16	50
Nevins Fruit Co	IV-FLA-465-FP-27	20
Nevins Ideal	IV-FLA-465-FP-27	6
Plymouth Citrus Growers Association	IV-FLA-465-FP-31	20
Riverfront Groves	IV-FLA-432-FP-19	20

Note: Period of use, May 1 to June 30, 1969.

JOB OFFER

Date__________________________

(Employer's name)

During the period beginning on the date on which worker arrives at place of employment and has been accepted for employment by Employer, and ending on the ________ day of ____________________, 19 _______ (herein referred to as the period of employment), the Employer hereby offers employment to pick citrus fruit to Workers to be selected by the Employer, on the following terms and conditions which shall become contractually binding on the Worker and the Employer upon the Worker's acceptance of this offer provided he enters into employment hereunder at the place of employment at the time specified by the Employer.

ARTICLE I

Preference

The Employer will give to the Workers employed hereunder preference in retention of jobs over non-immigrant aliens.

ARTICLE II

Lodging

The Employer will make available to the Worker upon his arrival at the place of employment and throughout the entire period of employment, without cost to the Worker, sanitary facilities and single-male type hygenic lodgings in accordance with the requirements of Section 602.9(d) Chapter V, Title 20 of the Code of Federal Regulations, but Worker shall have the right to reside, at his own expense, at other lodging of his own choice.

ARTICLE III

Insurance for occupational injury or disease

The Employer agrees to provide at no cost to the worker the protection of the workmen's compensation laws of the State of Florida. The worker agrees to report to the Employer without delay any illness incurred or injuries sustained in the course of his employment.

ARTICLE IV

Payment of wages

(a) Employer will pay Workers engaged in citrus picking, piece rates which are designed to yield average hourly earnings of not less than $1.81 an hour for a bi-weekly period. In no event will the average of the earnings paid to Employer's workers engaged in citrus picking be less than $1.81 per hour during any bi-weekly period. The average wage shall be computed by dividing the total amount paid by Employer to all of his worker's engaged in such picking during each bi-weekly period by the total number of hours worked by all such workers during such bi-weekly period. Whenever the average so computed is less than $1.81 the wages paid to each Worker so engaged will be supplemented by the percentage required to bring such average up to $1.81. In no event, however, shall the Employer pay the Worker a piece rate which is lower than the prevailing rate as determined by the Bureau of Employment Security.

Travel time to the grove at the beginning of a day's work and from the grove at the end of a day's work shall not be considered to be hours worked for any purpose and shall not be compensable. Travel time during the day between groves at which picking is to be performed shall be considered to be hours worked for purposes of applying the minimum wage under the Fair Labor Standards Act and the Employment Guarantee and average wage hereunder.

(b) The Employer agrees to make payment of wages in accordance with prevailing practice in the activity for which employed but in no event less often than bi-weekly.

ARTICLE V

Tools and equipment

The Employer shall furnish the Worker, without cost to such Worker, all tools, supplies, or equipment required to perform the duties assigned to him hereunder.

ARTICLE VI

Deductions

The Employer agrees to limit deductions from wages to the following: (1) those required by Law; (2) those for advances against wages; (3) payment for articles of consumption produced by the Employer which the Worker has purchased; (4) value of meals supplied by the Employer but not to exceed amounts specified in Article X; (5) overpayment of wages; (6) any loss to the Employer due to a Worker's refusal or negligent failure to return any property furnished to him by the Employer, or due to such Worker's willful damage to or destruction of such property; (7) deductions for transportation and subsistence costs paid for by the Employer as provided in Article VII of this contract. The deductions under (3), (5), or (6) in each pay period shall not exceed 10% of the total wages earned in that pay period. The sum of deductions under (2) and (7) in each pay period shall not exceed 50% of the total wages earned in that pay period. At the termination of the period of employment, however, or if the Worker abandons employment hereunder, the Employer may deduct from such Worker's final wage payment any outstanding balance due the Employer for deductions permitted by this provision.

ARTICLE VII

Transportation

The Employer agrees to provide or pay for transportation and subsistence en route from the place of recruitment to the place of employment in those cases where the worker completes at least 50% of the period of employment. An Employer who has made advances to a Worker for the costs of transportation and subsistence en route, may deduct such costs from earnings of the Worker until the Worker has completed 50% of the contract period. However, upon completion of 50% of the contract period, the Worker shall be entitled to reimbursement of the amounts so deducted. If the Worker completes his contract, the Employer will provide or pay the cost of return transportation and subsistence en route from the place of employment to the place or recruitment. except when the Worker is not returning to the place of recruitment, and his subsequent employment is with an employer who will bear transportation expenses. All transportation provided by the Employer will be by common carrier or other transportation facilities which conform to applicable regulations of the Interstate Commerce Commission.

It shall be the duty of the Employer, prior to the beginning of the work day, to make available to the Worker directions as to the location of the grove at which picking is to be performed, and it shall be the duty of the Worker to report for work at such grove; provided however, that, solely for the convenience of the Worker, the Employer will make available, without cost to the Worker, transportation to and from the grove at which picking is to be performed and the Worker may, at his option, either (1) take advantage of the transportation made available by Employer, or (2) provide his own transportation at his own expense.

ARTICLE VIII

Employment guarantee

The Employer guarantees the Worker an opportunity for employment for a number of hours equivalent to at least three-fourths of the workdays encompassed within the period of the contract beginning with the first workday after the Worker's arrival at the place of employment and ending on the termination date specified in the work contract, such number of hours to be determined by multiplying 8 hours by three-fourths of the number of workdays encompassed within the period of contract.

For purposes of the work contract, a workday consists of 8 hours of any day except Sunday, New Year's Day, July 4, Labor Day, Thanksgiving Day, or Christmas. If the Worker, during such period, is afforded less opportunity for employment than required under this provision, the Worker shall be paid the amount which he would have earned had he, in fact, worked for a number of hours equivalent to the guaranteed number of days. Where wages are paid on a piece rate basis, the Worker's average hourly earnings shall be used for the purpose of computing amounts due under the guarantee. In determining whether the guarantee of employment has been met, any hours which the worker fails to work during a workday when he is afforded the opportunity to do so by the Employer, and all hours of work performed shall be counted in calculating the days of employment required to meet this guarantee. If, before the expiration date specified herein, the services of the Worker is no longer required for reasons beyond the control of the Employer (such as but not limited to freeze, hurricane, frost, flood, drought, earthquake, hail, forest fire—but not including crop abandonment—or other calamity of such a character as to make it impossible for Employer to make available, to all workers employed by him to pick citrus, opportunity for employment for the number of hours guaranteed hereunder) and this fact is determined by the Regional Administrator, the period of employment hereunder may be terminated and efforts will be made to transfer the worker to other comparable employment. If such transfer is not effected, the Worker shall be returned to the place of recruitment at the Employer's expense. In either event, deductions for transportation and subsistence en route from the place of recruitment to the place of employment pursuant to Article VII of this contract shall be refunded. Whenever the period of employment is terminated under this provision, the Employer shall be responsible for the three-fourths guarantee for the period beginning with the first workday after the Worker's arrival at the place of employment and ending with the date the employment is terminated, and the Employer shall pay the Worker all other amounts due under the contract.

ARTICLE IX

Right to purchase at place of choice

The Worker shall be free to purchase articles for his personal use in places of his own choice, and shall be given an opportunity, once each week, during non-working hours, to go to locations where he can make such purchases. Where the location of employment is not within walking distance of the town offering the desired articles, and public transportation is not available, the Employer will make arrangements for transportation.

ARTICLE X

Meals

Meal charges hereunder will be $2.25 for three meals per day.

ARTICLE XI

Maintenance of records and statement of work and earnings

The Employer shall keep accurate and adequate records in regard to all earnings and hours of employment. Such records shall include information showing the nature of the work performed, the number of hours worked each day by the worker, the rate of pay, the amount of work performed, the earnings of the worker, and the deductions made from the worker's wages. Such records shall be made available at any reasonable time for inspection by representatives of the Administrator of the Bureau of Employment Security, and by worker or by representatives of the worker to whom the worker has extended, in writing, the authority to inspect such records. Such records shall be retained for a period of not less than one year following the completion of the contract. With respect to each pay period the worker shall be furnished, at the time he is paid for such period, a statement which shows:

His total earnings for the pay period,
His rate of pay and the average rate as determined under Article IV,
His hours worked,
His units produced where piece rates are used, and
An itemization of all deductions made from his wages.

ARTICLE XII

Discrimination in employment

The Employer shall not practice social or economic discrimination in conditions of employment against any Worker.

ARTICLE XIII

Protection from immoral and illegal influences

The Employer agrees to take reasonable steps to keep professional gamblers, vendors of intoxicating liquors, and persons engaged in immoral and illegal activities away from the Employer's premises.

The Worker agrees to refrain from engaging in immoral or illegal activities of any kind while upon the Employer's premises or during working hours and from consuming intoxicating beverages during working hours.

ARTICLE XIV

Water responsibility

The Worker hereby represents that at the time of employment he is legally competent to agree to the terms and conditions of employment hereunder, and that he is willing, qualified, and physically able to perform, and that he will perform in a workmanlike manner, the activities for which he is employed. He agrees that he will comply with all reasonable rules and regulations prescribed by the Employer in connection with his employment and he will not, without the consent of his Employer, accept employment from any other Employer during the period for which he has been employed, that affects his employment hereunder. He further agrees that any material failure on his part to comply with the terms and conditions of employment as provided herein without good cause is to be deemed a material breach and will be cause for the termination of his employment.

(Published by Citrus Industrial Council—Nov. 1967)

NUMBER OF FOREIGN WORKERS AUTHORIZED[1] FOR TEMPORARY EMPLOYMENT IN AGRICULTURE, BY STATE AND BY CROP, 1965-1969

State and crop	1965	1966	1967	1968	1969
U.S. total	48,111	27,662	29,105	16,129	
California	24,601	8,997	8,100	0	
Citrus	600	0	0	0	
Asparagus	1,000	0	0	0	
Strawberries	3,100	2,159	0	0	
Tomatoes	18,400	6,065	8,100	0	
Brussel sprouts	1,166	710	0	0	
Dates	335	63	0	0	
Connecticut	566	50	100	100	
Shade tobacco	566	0	0	0	
Apples	0	50	100	100	
Florida	15,841	12,206	13,936	9,571	
Sugar cane preharvest	2,153	1,822	1,657	400	
Sugar cane harvest	8,688	9,384	9,279	9,171	
Strawberries	1,000	0	0	0	
Citrus	3,500	1,000	3,000	0	2,000
Celery	500	0	0	0	
Maine	4,825	4,069	3,440	3,440	
Potatoes	4,500	3,700	3,000	3,000	
Apples	325	369	440	440	
Massachusetts	533	315	400	400	
Shade tobacco	183	0	0	0	
Apples	350	315	400	400	
New Hampshire: Apples	325	365	400	400	
New York: Apples	280	735	1,120	895	
Vermont: Apples	50	90	219	180	
Rhode Islands	60	85	75	52	
Potatoes	35	64	50	32	
Apples	25	21	25	20	
Virginia: Apples	760	525	979	764	
West Virginia: Apples	270	225	336	327	

[1] The number authorized by the Department of Labor is the maximum number that can be employed in a given State and crop. The number actually employed is often less than the number authorized.

ADVICE TO WORKERS RECRUITED IN THE WEST INDIES FOR AGRICULTURAL WORK IN THE U.S.A.

THE UNITED STATES FARM LABOUR PROGRAMME

When the United States Department of Labour is satisfied that American farmers are unable to obtain a sufficient number of American workers to reap the crops, the Department of Labour may permit the employment of foreign workers, including West Indian workers, on a temporary basis. The period of employment is always short and the foreign workers may be replaced at any time if American workers become available. When the period of employment has been completed the workers, as a general rule, have to leave the USA because transfers to other areas of employment are seldom possible.

2. The Secretary of Labour establishes wages known as adverse-effect wages, so that any American farmer who is given permission to use foreign workers has to pay all workers, both American and foreign a wage which is not less than that established by the Secretary of Labour. This means, in practice, that an American employer who does not wish to use foreign workers need not pay the adverse-effect wages and may make any arrangements he wants with American workers, even paying them a lower figure. Consequently, West Indian workers employed in the USA are employed under wages and working conditions which cannot be lower than, in the first instance, or worse than, the wages and condi-

tions applicable to American workers employed in the same occupation and by the same farmer.

3. The minimum hourly wage in the sugar industry is set under the U.S. Sugar Act by the Secretary of Agriculture and applies to all workers, whether they be American or foreign.

4. You must understand, therefore, that if you are recruited for the USA you will receive no less than the wages paid to American workers and that in most instances your earnings will be more than the adverse-effect wages fixed by the Secretary of Labour, or the minimum hourly wage set by the Secretary of Agriculture.

5. Once you have been selected and have passed your medical examination, as well as any other checks carried out by your Government, you will be required to sign a document known as a Work Agreement or Contract. This document is signed by the American employer or by his agent, and by a Government agent also.

6. You should keep your copy of the contract very carefully and you should study it, so that you will know the requirements which you have to meet as well as the requirements the employer has to meet.

7. Your contract will show the area in which you are to be employed and you cannot leave that area so as to work in another area except with the permission of the U.S. authorities and the agreement of the British West Indies Central Labour Organisation.

8. You are not permitted to do any type of work which is connected with industry, but you must do any type of work in agriculture which has been approved by the British West Indies Central Labour Organisation.

9. The work day is usually eight hours long, six days a week. You are entitled to one day's rest per week but your day off need not be a Saturday or Sunday because of the nature of your work in agriculture. However, the majority of the work is performed at piece rates, therefore you may work longer than eight hours if you so desire. When leaving the canefields you must always report to your scratch foreman or time-keeper who will tell you at that time the number or hours recorded for you on that day. If you have any question about your hours it should be settled at that time, but if it is not, you should report the matter to your Liaison Officer.

10. You may be required to cultivate sugar cane, to cut sugar cane, or to work in tobacco fields and fruit orchards. Workers, on occasions, have been employed in vegetables.

11. The system of planting sugar cane in Florida is entirely different from the system to which you have been accustomed in your own country. *The companies in Florida use a system known as a "single row", but often West Indian workers regard this, the Florida row, as a double row.* However, the work is situated in Florida and you must adapt yourself to the Florida system.

12. The sugar cane is cut by the row at piece rates, which will vary from field to field, and often the price of a field will vary from year to year because the price is based on the tonnage yielded by the field. However, the piece rates are such that it is possible for a cutter to earn more than the minimum hourly wage set by the Secretary of Agriculture.

You must not expect, however, that because there is a minimum hourly wage you are not required to cut an amount of cane which would justify that hourly wage.

13. During the first two weeks of employment, the field foremen, who are usually Americans, and the scratch foreman or the leadmen, who are usually West Indian born, will give a new cane cutter time to become accustomed to the work and will not pay too much attention to the length of the row which has been cut.

14. Work in the fruit orchards usually requires the use of ladders on which the pickers climb, and the use of bags or pails into which the fruit is placed. The trees must not be shaken, because if the fruit drops on the ground, it is usually bruised and its market value lessened. Sometimes the growers do pick up fruit which is dropped naturally from the trees.

15. The camps in which you live will have been inspected by representatives of the U.S. governmental agencies, as well as by representatives of the State governmental agencies, such as the Health Department and the Labour Department. They will also have been inspected by the British West Indies Central Labour Organisation. You will be given a comfortable bed and there will be hot and cold water in the bathrooms, while meals will be served usually in cafeteria style in the dining room. When you arrive, your quarters will be in good con-

dition and you must keep them clean. Laundry facilities are provided so that you can keep your clothing clean.

16. You are required under the terms of your contract to live in the camps or in the houses provided, and you cannot be permitted to live with friends or relatives.

17. *When you are away from your camp you must remember to walk on the sidewalks at all times, but if you are walking along a road which does not have sidewalks, you must walk at the edge of the pavement and always walk facing oncoming traffic.*

18. If you leave the service of the employer to whom you are contracted before your contract expires, and work for another employer, or if on your day off you work for an employer other than the one to whom you are contracted, you will have violated the U.S. Immigration & Naturalization Service regulations and you will be subject to apprehension, detention and deportation to your homeland. If you are repatriated because of such actions, for which you are regarded as having been absent without leave, you will not be considered for recruitment in the future and you will be responsible for paying high immigration costs.

19. The cost of your transportation from Kingston-Jamaica to Florida will be advanced by your employer. Your employer will collect the money so advanced from your wages, but when you have completed fifty per cent of your contract period you will be entitled to a refund of any collections which have been made by the employer. During your aeroplane journey you will be given food.

20. Your contract shows that your employer must provide sufficient work for you in each pay roll period of two weeks, to permit you to earn not less than the stipulated minimum. Your employer, if unable to provide sufficient work for you to earn the stipulated minimum, will augment your earnings by an amount, so that the total will be equivalent to the stipulated minimum. *The stipulated minimum is based on a two-week payroll period*, so that a shorter period will result in a proportionately reduced stipulated minimum.

21. The employer must provide you with work for at least seventy-five per cent of the time. This means that you are guaranteed 36 hours of work per week. This guarantee is calculated when you have successfully completed your contract period.

22. Meals are provided by the employer at a rate which is shown in your contract at the time of signing. You must remember that each camp has a large group of men and that it is impossible to cater to the whims and fancies of individual workers, so you must expect to receive the same food as the rest of the men in your camp.

23. If there is serious illness in your family, or if there is a serious problem in your family, such as the destruction of your home by fire, or an accident involving members of your family, you should consult your Liaison Officer and ask him to arrange for your repatriation before the end of your contract. You will be responsible for your repatriation expenses, but if after your repatriation to your homeland your Ministry of Labour or Labour Department reports that your reasons for returning home were genuine and that it was necessary for you to be back at home, your employer will pay your repatriation expenses as far as Jamaica.

24. It must be remembered that during December and the early part of the following January there is a large amount of tourist traffic between the USA and the West Indies, so that it is often impossible to obtain a seat on an aeroplane at short notice, and workers may be forced to wait for as long as ten days before plane passage can be found.

25. The British West Indies Central Labour Organisation may terminate your employment—

(*a*) by giving your employer 10 days' notice in writing; or

(*b*) immediately, if satisfied that you are suffering hardship because enough work is not available or because you have been treated improperly.

26. The employer may terminate your contract by giving 10 days' notice in writing to you or to the British West Indies Central Labour Organisation that you are to be released. However, in the case of an act of God, such as frost, hail, storm, flood, etc. when work may come to an abrupt or sudden end, the 10 days' notice is not required.

27. You will be repatriated at your own expense—

(1) if you are liable for deportation from the USA (see paragraph 18);

(2) if you have been convicted of breaking any law of the USA;

(3) if you are unwilling to work in accordance with the terms of your contract;

(4) if you have committed an act of misconduct or indiscipline.

If you are repatriated for any of the reasons set out above, you will not be entitled to the benefits of the seventy-five per cent guarantee.

Any expenses incurred by the British West Indies Central Labour Organisation in your repatriation for the reasons set out in paragraph 27, must be repaid by you to your Government.

28. Your Government, in the case of workers recruited from countries other than Jamaica, will advance the cost of your fare as far as Kingston-Jamaica, and from Kingston-Jamaica to your homeland at the time of repatriation. You will be responsible for the payment of the advance made by your Government and deductions will be made from your earnings to meet these debts to your Government.

29. If you are refused entry in the USA through no fault of your own, your subsistence expenses and your return transportation as far as Jamaica will be paid by your employer and your Government will pay for your transportation from Jamaica to your homeland.

30. *The British West Indies Central Labour Organisation and your employer will agree on rules and regulations in regard to safety, discipline and the care and maintenance of property. You will be required to conform with these rules and regulations and you will be required to wear the safety devices, such as goggles, gloves and leg shields,* so as to reduce the danger of serious injury to you while at work.

31. Collections and deductions from your wages can only be made in accordance with the terms of your contract.

32. The British West Indies Central Labour Organisation will pay premiums on your behalf for insurance to protect you during periods of disability caused by accident or sickness which occur off the job. Very few insurance policies cover all of the charges made by doctors, hospitals or drug stores, and like most policyholders you must expect to be responsible for any difference between insurance benefits and actual charges. You must pay for the medical fees for the first visit to the doctor in each ailment.

33. Your employer will provide workmen's compensation benefits, including medical and hospital care, for periods of disability due to accident or sickness which are job-connected. These benefits will be paid in accordance with the law of the State in which you are working and in which you are injured.

34. An amount not exceeding fourteen per cent of your gross wage will be transmitted to your savings account in your homeland at the end of each payroll period. These savings will be handled by your Government in accordance with the "Local Agreement" which you signed at the time of your recruitment. Your family allotments will be paid from these savings.

35. Under the terms of your "Local Agreement" deductions may be made from these savings for—

(*a*) family allotments;

(*b*) payment of any sum as required by an Order from a court of law in your country;

(*c*) repayment of your transportation and repatriation expenses which had been advanced by your Government. (Barbadians will first repay their Government for their transportation to Jamaica and then for their transportation from Jamaica to Barbados);

(*d*) dependent allotments of not more than $12.00 (WI) per month. (Dependents of Barbadian workers will not receive an allotment until you have satisfied your debt for transportation from Barbados to Jamaica);

(*e*) deductions which may be made by your Government to cover any debts incurred by you while you were in the USA;

(*f*) an amount not exceeding $250 (U.S) may be retained in your account to cover any expenses you might incur in the USA, such as liquidated damages if assessed by the U.S. Immigration & Naturalization Service, or the actual cost of apprehension, detention and deportation as assessed by the Immigration & Naturalization Service and repatriation expenses to your homeland, if you are repatriated for breach of contract.

36. You should study your "Local Agreement" carefully and note that any money advanced by your Government on your behalf which is still owed after your repatriation can be recovered by your Government through the law courts.

37. When you have completed your contract successfully and have returned to your homeland, your funds can be withheld for not more than thirty days after your repatriation.

38. If you return home for breach of contract, your funds may be retained in your account for not more than six months after the date of your return.

39. *You should save your pay-stubs whilst you are on contract so that when you return home you can check your account without any trouble.*

40. When you are recruited you will be given an identity Card which will be used instead of a passport. This Identity Card must be carried by you at all times and if it is lost you must report the loss to your Liaison Officer immediately.

41. The names, addresses, and telephone numbers of the Chief Liaison Officer and all the Liaison Officers will be shown on the notice board in your camp. The telephone numbers of the offices are:—

Washington — Area code 202: DE 2-7778
Orlando — Area code 305: 841 - 5860
Belle Glade — Area code 305: 996 - 6421
Clewiston — Area code 813: YU 2-3181

42. If you are arrested for any reason, or if you are in any difficulty, you should communicate with your nearest Liaison Officer immediately. If you are injured on the job or in your camp, you must report your accident to your foreman immediately. If you become ill, you must report your illness to your supervisor immediately.

43. *If you are injured or become involved in any situation, such as a bus accident or an automobile accident, where you are given a form to sign, you should not accept the form or sign it without the advice of your Liaison Officer.*

44. Your Government has established a maximum amount which can be paid from your savings each month to your dependents but if you wish for your dependents to receive more money than this you should send the extra money direct to your dependents.

45. *Never send currency, either notes or silver, through the mail.* The safest method of transmission is to purchase a United States Postal Money Order, fill in the name and address of the party to whom you are sending the money, detach the stub from the money order and keep it carefully in case the money order is lost.

46. If you wish to stop your allotment to your dependents, you must discuss your desires with your Liaison Officer who will write to the proper authority in your country. However, you must remember that you are expected to support your family, especially your children, so that you should only stop your allotment after very careful consideration.

47. If you wish to send money to a dependent other than the person named in your "Local Agreement", you must arrange to do this from your money in the USA.

48. Nearly all camps have commissaries at which work clothing, toilet articles, and some dress clothing may be purchased. The prices will not exceed the prices in the stores of the towns nearby, and in most cases they are less than the store prices. Credit in the commissaries is limited, and you should not attempt to take more goods than you actually need.

49. You may be approached by pedlars or other workers selling attractive looking watches, jewellery and clothing, but you are advised to make your purchases only in recognized stores and to purchase for cash only.

50. Do not purchase switchblade knives, revolvers, guns or ammunition, as such purchases may lead to trouble with the legal authorities both in the U.S.A. and in your country. If you attempt to take weapons or ammunition back home, the customs Officers in your country who are required to search your baggage and your person, in some instances, will confiscate any dangerous weapons found in your possession. You also will be liable to prosecution for attempting to introduce weapons into your country.

51. When you are notified that you will be leaving your country for the USA, you should have a substantial meal before you leave for the airport and you should also take food with you in case there is a delay in your departure.

52. You must be dressed cleanly and neatly for your plane trip so that when you arrive in the USA you will be respectably clad. If you have a sweater or a warm coat or windbreaker you should take it with you.

53. When you are leaving your country you will be allowed only 20 lbs. of baggage and you should not take rum or any other alcoholic beverage, lighter fuel, matches, or anything else which might burn. You must not take seeds, fruit or vegetables, because the U.S. Customs will check your baggage on arrival and confiscate any prohibited fruit or vegetable matter.

54. The first charge on your savings for workers other than those recruited in Jamaica, is the repayment of the northbound transportation advanced by your Government. Once your Government has been paid, allotments will be made to your dependent and the balance of your savings kept until your return home.

55. The rate of exchange may vary from time to time. Consequently, you will be credited at the rate prevailing when your savings are received in your country. Please remember that payrolls have to be audited before your savings can be sent to your country, so that there may be a considerable lapse of time between your receiving your pay and your Government receiving your savings.

56. Gambling, fighting and the use of bad language may lead you into trouble with the police authorities, as well as in your camp. Fighting among workers will not be tolerated under any circumstances.

57. Do not leave valuables, including money, in your suitcase or your foot-locker, and do not give valuables such as money, watches or jewellery, to other workers to keep on your behalf. Ask your supervisor to take your valuables into safe-keeping on your behalf.

58. If you are saving your money in the USA and accumulating a substantial sum, it is best to open a savings account in a nearby bank. The account can be closed when you are leaving for home and you may withdraw your money so as to take it with you.

59. You should not invest in an automobile while you are in the USA. For one thing, you may not be permitted, in view of the regulations, of your own Government, to take the car home. For another thing, the cost of insurance and of upkeep is extremely high.

60. Your Government has given you a letter which you should read carefully and remember the advice therein contained.

61. Each worker from the West Indies has decided to leave his country and to put up with the discomfort and inconvenience of being away from home and his family, so that he may work and save money to better himself and his family after repatriation. Each worker is a representative of his country, and as such, is an unofficial ambassador, so he must conduct himself with dignity and pride at all times and do nothing which will reflect on either himself or his country.

[From U.S. Department of Labor, Office of Information, Washington, D.C., January, 1969]

NO FOREIGN CONTRACT WORKERS WILL BE HIRED FOR CALIFORNIA CROPS IN 1968, WIRTZ REPORTS

Labor Secretary Willard Wirtz today said that "not a single foreign contract worker will be employed in California crops in 1968."

This will be the first year since 1942 that the California fruit and vegetable crop has not used foreign contract field hands, Mr. Wirtz said.

"The absence of foreign agricultural workers in 1968," he declared, "represents an historic step toward healing the migrant worker sore in California and in the entire United States."

Mr. Wirtz reported that the spring of 1968 marked the first spring in 27 years that there were no temporary foreign farm workers admitted anywhere in the U.S. for employment.

Last year, he noted, there were no foreign contract workers employed in California crops between January and late September. But by mid-October there were 5,900 working in the state's crops.

Secretary Wirtz said that the termination of Public Law 78 in December 1964, "signaled the eventual demise of the century-old practice of importing foreign farm laborers to the U.S.

"What has happened in the 4 years since the end of this infamous program," he said, "represents an impressive story of progress for domestic farm workers in the State of California."

Mr. Wirtz cited these "heartening developments" since the termination of the mass importation of foreign agricultural workers in California:

> A 15.5-percent rise in man-months of domestic farm employment between 1964 and 1968: from 801,000 to 925,000 for the first 8 months of each year. During this period, foreign agricultural employment dropped from 190,000 to zero man-months.
>
> 25.2-percent rise in hourly farm wage rates (without room and board) between 1964 and 1968: from $1.35 to $1.69 an hour.

Secretary Wirtz said that in every month of 1968 employment among domestic seasonal farm workers in California has topped employment for these field hands in the 1959–64 period, the last 6 "bracero" years.

In August 1968, he said domestic farm employment in the state reached 168,600, compared with an average of 130,600 for the month in the 1959–64 period.

He gave these month-by-month comparisons showing an increase in domestic farm employment between 1968 and the average of the 1959–64 period:

July, 131,300 to 123,400; June, 144,300 to 126,700; May, 136,100 to 114,000; April, 92,700 to 70,100; March, 79,300 to 56,100; February, 85,900 to 66,300, and January, 87,300 to 79,600.

Despite the increase in farm wages over the past 4 years, the U.S. wholesale price index for fresh and dried fruits and vegetables was lower this July than it was in July 1964, he said.

In July 1968, the wholesale price index for these commodities was 108.2, compared with 108.9 in July 1964, the last year of the mass importation of foreign workers in the U.S.

It is apparent from this, he said, that wages play a small part in determining the prices farmers get for their produce. Increases in retail prices are largely the result of increased processing and distribution costs.

The Secretary also cited "very impressive" increases in the production of several former bracero-using crops between the 1960–64 period and 1968, showing "progress for California farmers."

He pointed out these production gains in former foreign-using crops between the two periods (1968 data is preliminary or indicated):

Tomatoes for processing—up 59.1 percent; strawberries—up 29.8 percent; lettuce—up 27.3 percent; celery—up 12.3 percent.

Senator MONDALE. Our next witness is Mr. Arnulfo Guerra, of Roma, Tex. Senator Yarborough will introduce his fellow Texan.

Senator YARBOROUGH. Mr. Chairman, I am happy to have this honor and privilege of introducing a constituent of mine. He is an attorney at law on the border in a country that has one of the lowest per capita incomes in the United States.

Back when Harrison Williams last year was chairman of this subcommittee, we held hearings at Rio Grande City, and in Edinburg, Tex., and it was developed in those hearings that there are families in Starr County, which is on the Rio Grande, the third county removed from the Gulf of Mexico, who work in agriculture where the total earnings of the families were $300 a year, or less—not the $3,000 poverty level—but $300 a year, or less.

Mr. Guerra comes from an old Texas family. It has been there for generations, before most of the Anglos came.

There was a Guerra who was a classmate of mine in law school too many decades ago to mention.

This is a family, however, of prestige in this county. I am happy to introduce him, Mr. Chairman.

I have read your statement in full, Mr. Guerra. Due to another hearing, I am forced to leave. Here is a man who is an attorney and understands this problem and I want to emphasize that what he says is correct, that there is no statutory authority whatsoever, that they just administratively decided to do this.

I want to commend his statement, and I want to commend his appearance to you, Mr. Chairman.

Senator MONDALE. When I too made a brief visit to Texas, you recommended that I call Mr. Guerra and talk to him and others about the problem.

I quickly found he was one of the most knowledgeable people on the subject. He is a lawyer who got up at 4 in the morning to go down to the border with me.

Senator YARBOROUGH. That is normally the time I go to bed, Mr. Chairman. I would hate to get up at that hour in the morning.

Senator MONDALE. Mr. Guerra?

Senator YARBOROUGH. I regret I have to leave. You not only know the regulations, you know how they are working. You see what happens on the border.

STATEMENT OF ARNULFO GUERRA, ATTORNEY AT LAW, ROMA, TEX.

Mr. GUERRA. Thank you, Senator. I hope I can explain that fully to the committee now.

Mr. Chairman, it is certainly a great pleasure for me to be here today. I can't help but remark that the dialog of your interview with Mr. Ruttenberg leaves me rather speechless.

I would hate to go back to the hungry faces of our people, to the hungry faces of the Mexican Americans, and take to them the very bleak picture that is being painted before us today.

Your use of the word "powerlessness" reaches great proportions when this subcommittee finds itself in a situation that it does. To arrive at a conclusion at this early stage that there is very little that can be done for the migrant worker, and, of course, for the Mexican American, touches very close to home.

I do hope that we can find more hopes than what we have had in the past, because that is what we have survived on, hope.

In that regard, I certainly want to commend you, Mr. Chairman, for the manner in which you have taken hold of your subcommittee, for the great efforts, the great interest, and compassion which you have shown up to now in dealing with the Mexican American problem and in dealing with the migratory farmworker.

I am not too familiar with the workings of the Capital, but I do know it takes a long time for anybody to do anything. And when you forsake your time to go to our desolate area to see for yourself what the conditions are, without the glitter of the cameras, and you spend so much time, and incidentally my getting up at 4 in the morning was matched by your getting up at 4 in the morning, that left a tremendous impression in the minds of those of us Mexican Americans who had contact with you.

We classify you in the same category that we hold our dear Senator Kennedy, and certainly our own dear Senator Yarborough in the efforts to help the Mexican American.

With that, Mr. Chairman, I would like to go into my brief statement, which I would like to offer for the record.

Senator MONDALE. I think it would be useful, Mr. Guerra, if you would read the whole statement. I think it is a very useful one. You have attended all of our hearings, and this is a statement based not only on what you were planning to say, but also composed in light of what we have heard thus far. I think you should read it all.

Mr. GUERRA. I will, and if I may, I will digress from it to explain wherever I think that an explanation might further clarify the statement.

I will attempt to limit my testimony before this subcommittee to the issue of the commuter, or green carder, as it relates to the migratory or seasonal farmworker, and more specifically, to the very questions of (*a*) how a commuter is created, (*b*) laws and regulations affecting his status, and (*c*) supervision and control.

The historical background of the commuter singles out as its creator both the Department of Labor and the U.S. Immigration Service. There is absolutely no statutory authority to provide a basis for this creature, and actually, the Immigration Service has always maintained as the basis the desire to maintain good international relations, a matter of reciprocity, the concern for the livelihood of aliens who had been commuting to the United States for employment, the needs of American industry, and the needs of communities which had grown up in close proximity to each other on both sides of the border.

If I may digress, there is nothing anywhere in any record which has been created by the Immigration Service to show that they have had any interest in the one class of people who are affected most by the commuter, the Mexican American and the resident Mexican who lives along the border.

There is absolutely no showing whatever that the Immigration Service has had any desire to even recognize the problem. They have chosen to ignore the problem to the extent that the commuter was not even a statistic up until 1967.

It was only because of the restriction in Starr County and in California that the commuter began to play a part in the Immigration Service, and only then as a commuter, and not how he affected the Mexican American and the migratory farmworkers.

Senator MONDALE. Would you agree with Mr. Ruttenberg, then, that this is an administrative choice or inadvertency on which this whole commuter system has developed, and that authority for it is not found in the law?

Mr. GUERRA. Yes, very much so. I am not a racist. If I may add, I see and find undertones of tremendous discrimination against the Mexican American along the border in the attitude of the Immigration Service in the way they have handled themselves in dealing with this problem.

This is a matter of discrimination by ignoring the facts as they are. In the matter of recognizing needs of industry and the needs of everyone else to the exclusion of a class of people, this has been the attitude of the Immigration Service all along.

Senator MONDALE. The other day, some of us marched with Cesar Chavez down to the border, to Calexico, and I was impressed with the great care and attention given by our authorities and the Mexican authorities to fastidiously enforce the law to prevent any relationship between U.S. labor and Mexican labor to work together.

Thus, there were many police, many officials on both sides. They were very careful not to let us meet on a public street, to go around very briefly with all sorts of police and public law enforcement officers there, to let us meet briefly with Mexican labor. There was planned a symbolic meeting designed to serve farmworkers of this country and Mexico, the Mexican American citizens of this country, and resident aliens.

If they would show one-tenth of the interest in the prevention of the use of the Mexican seasonal worker and commuter in breaking a strike in this country, I think their credibility would be much higher than it is.

I think this shows, although they claim to be impartial in their law enforcement practices, a spottiness of impartiality. It is like the butcher who always makes mistakes; but a funny thing, it is always in his own favor.

Mr. GUERRA. I would agree.

Senator MONDALE. I think your point about a lack of concern for the deprived of our country as reflected in the enforcement policy is true.

Mr. GUERRA. The commuter arose not because of a Mexican problem. It arose as the result of problems on the Canadian border. It certainly did not have its beginning along the Mexican border.

We have been the beneficiaries of this ill-thought-out program. We have been the victims. We have received all that is bad within the system. By we, I mean the people, the Mexican-American people of the border.

It is necessary to understand how a commuter is created to be able to appreciate the many problems which arise if he becomes a commuter. I will proceed.

A. HOW A COMMUTER IS CREATED (AS RELATES TO THE MEXICAN BORDER):

The quota for the Western Hemisphere has been set at 120,000. Department of State regulations prescribe the manner in which aliens can obtain visas for lawful, permanent residence in the United States. Applicants are classified generally as: (1) preferential, and (2) nonpreferential.

(1) PREFERENTIAL APPLICANTS

Preferential treatment is accorded to applicants who are the parents, spouses, or children of U.S. citizens, or of persons lawfully admitted for permanent residence (green carders or commuters). All applicants, regardless of preference, except in a few exceptional cases, must present to the State Department, identification documents, Mexican passport, health and security clearances, and such proof of financial responsibility as will show that the applicant will not become a public charge if admitted.

Where the primary means of support is employment by the applicant, he must also provide an offer of employment from a prospective employer. An applicant under the preferential classification does not need a certification from the Labor Department to the effect that there is no shortage of workers in the United States in that particular occupation and that his entry will not adversely affect wages and working conditions of U.S. residents.

Senator MONDALE. It is interesting. Yesterday is the first time I realized that, and it came out toward the end of the time, that the adverse effect finding that we were told about is made in a minority of the cases in which green cards have been issued.

Mr. GUERRA. I would say, Senator, that the 16,000 or 17,000 agricultural workers who entered last year, according to the statistics provided by the Immigration Service, came under this preferential category, where no certification is required. This is one of the evils that has to be corrected, because you are creating 18 or more thousand commuters every year under this system.

Therefore, labor certification is meaningless when it is handled in this manner.

In addition, these applicants are advanced on the waiting lists. Since Immigration spokesmen testified that the great majority of visas granted since 1965 have been to aliens in this category, it is of prime importance to ask of the State Department and Immigration Service the following:

(*a*) The number of aliens who have been admitted yearly since 1965, or at least since then, under this class.

(*b*) The type and nature of proof required to establish the preference.

(*c*) The minimum standard of proof necessary to satisfy employment and financial responsibility requirements.

(*d*) Frauds and loopholes, and how they are being cured.

Senator MONDALE. In your opinion, are there several in the (d) category?

Mr. GUERRA. Senator, before the Committee on Immigration, the Western Hemisphere Select Committee, showed that in one class alone, the spouse of an American citizen or a legal resident, in the California area, again, there were 4,000 fraudulent cases involving fraudulent marriages in order to obtain this preference.

Senator MONDALE. In other words, they claimed they were married in order to gain citizenship but really weren't.

Mr. GUERRA. Or they married strictly for the purpose of getting this preference.

In my area in Texas there are many hundreds of cases of this kind.

Senator MONDALE. Yesterday when we were discussing the phony baptismal certificates, afterwards one official said, "You should have asked about the phony birth certificates." He said there were counties in Texas where the officials will issue birth certificates under the most specious circumstances, and in great quantities.

Mr. GUERRA. I am familiar with that. There is a gentleman who used to be viscount in Monterey, Mr. Thomas Cummings, who did a marvelous job in spotting this particular problem. It had escaped everybody. He found that there were thousands of applications in his area alone involving fraudulent birth certificates. There were birth certificates of children who supposedly were registered in the United States as born in the United States, but who had been born in Mexico.

The biggest abuse, by far, came from midwives, who were paid anywhere from $50 to $100 to register the birth certificate showing that she attended the mother at time of birth.

I would add, too, that the Immigration Service devoted, and is devoting, several investigators to cover thousands of these cases, and it is impossible to cope with the problem under the present system that they are operating under.

Senator MONDALE. You may recall their testimony, in which I asked them how adequate their staff was to police and make factual determinations and plug these loopholes and determine these frauds.

As a lawyer who practices along this border, is it your impression that their personnel, numbers, amounts, and budget is adequate to do the job?

Mr. GUERRA. I would say there are two problems, Senator. One, I believe very strongly that the Immigration Service and the border patrol are slack in their obligation to insure that their personnel are properly trained, and that they continue to receive proper training to meet all the problems.

Second, certainly there is a tremendous shortage of personnel. They are not properly equipped to handle these problems. That shows that through the years there has been a tremendous apathy toward the problem, because certainly this problem should have been recognized and anticipated and projected, in figures at least, for future actions.

The reason I asked these questions of the Immigration Service, Senator, is because it is obvious that we are here creating commuters by commuters.

Under this preferential system, a commuter qualifies, since he is supposedly a legal resident, qualifies to give preference to his children, or to his sons, or a son to his father and mother, and thereby to other members of the family.

Senator MONDALE. Or to someone he says is his son.

Mr. GUERRA. Correct, or to somebody he says he married.

So here, again, a commuter is creating more commuters.

Senator MONDALE. This is the so-called pyramid effect that they were referring to. This is less of a loophole than a truck hole.

Mr. GUERRA. Yes. As you saw yourself at Hidalgo, the workers were waiting in the pit.

(2) NONPREFERENTIAL APPLICANTS

These applicants must meet all the requirements as listed in (1), above, and in addition, must obtain the described labor certification.

Aliens entering to engage in defined skilled or professional type of jobs are also exempt from the certification. They would, of course, not be farmworkers. Practically no visas are issued now under this class because of waiting periods and the impossibility of obtaining certification for agricultural work.

Once a visa is issued by the State Department, the alien applies for entry at an immigration port of entry, and after inspection, if all documents are in order, the Immigration Service issues him the famous I–151, or green card. The moment the new lawfully admitted permanent resident enters the country, he can shed his legal resident's cloak and become a commuter.

Senator MONDALE. When the applicant for a green card gets his card, does he say he will establish residence in the United States?

Mr. GUERRA. If he didn't, he wouldn't get a visa.

Senator MONDALE. Yet we stood there that morning and saw 2,000 people come across that border, and 30 percent of them had green cards, and were obviously commuters.

Mr. GUERRA. At least that many. We missed out on the other class of commuters who come in later during the day. We were there with the early birds.

Senator MONDALE. Right. Most of the early crossers are probably farmworkers.

Mr. GUERRA. How can it be justified that a person who cannot get something legal, this particular moment, can the next moment, just by crossing into Texas, or into the United States, become something else, under no statutory authority whatever?

Senator MONDALE. In other words, to get the green card, he has to declare under oath that he intends to reside permanently in the United States?

Mr. GUERRA. That is right.

Senator MONDALE. But once he has been issued the green card, he is free to reside in Mexico and commute, or to be used in breaking labor strikes, or working for minimal wages in the United States?

Mr. GUERRA. That is correct.

Senator MONDALE. And this happens freely and widely at the moment?

Mr. GUERRA. This started in 1927 by the simple expediency of the Immigration headquarters issuing a regulation saying you had to recognize this because Congress had not provided a remedy for people who were commuters then.

Since then, for 40 years, this system has gone along and will continue, if it wasn't for the outcry that people like you and some of us have raised.

Senator MONDALE. When they say, "We have plugged substantial loopholes by limiting braceros," isn't it true that this commuter status places no limits whatsoever on the flow of Mexican labor into the United States?

Mr. GUERRA. Senator, that is my position exactly. We have accomplished a labor force to substitute a program for the bracero program, only there is no comparison, because the bracero program had some safeguards. The commuter here has no safeguards whatever. He is an animal, to you, Senator, I cannot say anything to you that you do not know because you saw this class of people.

How can we say that those 2,000 or more people who were at Hidalgo on March 20 were much more than animals, the way they were being treated.

Is this what we substituted when we did away with the bracero program?

Senator MONDALE. In other words, your testimony is that you think we are worse off?

Mr. GUERRA. Definitely so, because here is a man who is not supervised, not controlled, in any aspect to retain his titles, and there is no control whatever, no supervision whatever as to his rights, if any.

He is a victim any way you look at it, too.

Senator MONDALE. The bracero was intended to be protected by the United States to the extent that he had rights in the United States while he worked here.

Mr. GUERRA. And by the Mexican Government, too.

Senator MONDALE. Many of the people we asked had been working all week and had not been paid. Many work all day and get $2, and the crew leader would take 50 cents back that he said was for social security, and it was really a tragic, unbelievable predicament. I thought some of them we talked to were clearly under age.

Mr. GUERRA. Yes, sir. No question about the fact that this is a typical situation all along border towns where commuters are allowed to congregate in that manner.

I raise this question now, and I will come to it later, and it is important: How could anybody consider that those persons whom we saw there at the bridge at Hildago, those commuters, how could anybody consider that those people are engaging in stable and permanent employment when every day they have the choice of going with different truckers to different areas and not even knowing where they are going to wind up that day.

Senator MONDALE. In other words, one of the regulations that is required to continue to be eligible to hold a green card is that you are not unemployed for a period of more than 6 months. What is the stable employment requirement to which you made reference?

Mr. GUERRA. We are talking about the commuter. The commuter is required in order to maintain his status as a commuter, not to be without permanent stable employment for more than 6 months.

The other ways he would lose his status and would have to apply for a visa again.

The question, then, is what is permanent, stable employment, and what agency is in charge of determining this point?

This in itself would be the key to this whole problem if the agency in charge of the determination would do something about it. That agency happens to be the Immigration Service.

They created this monster. It is their baby. They nurtured it along.

My position is this. There are practically no commuters in the agricultural business who can meet the requirement, and as strict and strained as it is, who can meet the necessary employment requirement.

Senator MONDALE. Of permanent and stable employment?

Mr. GUERRA. Yes, and I will get to that in the next material I have, and I will develop it further as we go there.

B. LAWS AND REGULATIONS AFFECTING THE COMMUTER STATUS

(1) There is absolutely no statutory authority for the creation and subsequent supervision of the commuter. Obviously, up to the present, the commuter has enjoyed complete liberty to change his status from a permanent legal resident to a commuter. Congress did provide definitions in the Immigration and Nationality Act which gives birth to the legal resident, and those definitions are clear as to meaning and intent: Lawful permanent resident of the United States means an alien who has been lawfully admitted into the continental United States or its territories for permanent residence therein and who since such admission maintained his domicile in the United States.

This is a requirement for a permanent resident.

Lawfully admitted for permanent residence means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws enacted by Congress and implemented by regulation. Residence means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

Now, this is what the Immigration Service goes by in dealing with the permanent legal resident.

Now, here is where the trick, where the magic takes place in the hand of the Immigration Service.

Since 1927, the Immigration Service, by what has been called "an amiable fiction," and without any statutory basis, has been equating "permanent residence" with "employment." The way a commuter meets permanent residence is by employment, and that is the official Immigration Service way of solving this problem used since 1927.

This fiction was recognized judicially in the case of *Petition of Correa*, 79 F. Supp. 265 (W. D. Texas, 1948) and has been recognized in various decisions of the Board of Immigration Appeals which is the highest administrative judicial agency of the Immigration Service.

Two cases of interest are matter of *Bailey*, interim decision 1546, January 6, 1966; Matter of *Bonanni*, interim decision 1637, September 2, 1966.

(2) In 1927, once "employment" by a commuter was equated with "domicile" and "residence," the Immigration Service set up a standard that when a commuter had been out of employment in the United States for 6 months, he was deemed to have abandoned his status of residence.

This standard has been modified by the Board of Immigration Appeals to the effect that within 6 months after the commuter is "employable", he must take up stable and permanent employment or he will lose his status and entry documents.

So we have here the question of what is permanent and stable employment to satisfy this requirement.

This requirement was obviously established by the Immigration Service under power to regulate, and if they have a power, if they had the power to issue an initial regulation in 1927, certainly they have had the power to do something about it through the last 40 years.

To rely merely on the excuse that the Board of Immigration Appeals has limited the application of the 6 months prohibition is really begging the issue and begging the question.

I maintain that the Immigration Service now can still, by regulation, properly define employment so that it accomplishes what it is supposed to accomplish in the beginning, because in essence the commuter is getting a tremendous preference over the permanent legal resident who under conditions such as this would lose his status.

For the Immigration Service to say, "We must rely on Congress to pass some laws to change this problem, because for 40 years administratively they have recognized its existence," is for them to deny the fact that they are now begging off.

They have the authority to do it, and I wish there were some way that they would not only realize it, but that they would do something about it, because this would afford a lot easier solution than having to wait patiently for our great Congress to do something about it.

C. Supervision and Control of the Commuter

Since the commuter is a creature of the Immigration Service, and since by their definition the commuter status is a privilege conditioned on conduct, we must place the responsibility of supervision and control of the commuter on its shoulders.

The mountains of facts attesting to the monstrous character of the commuter problem and the myriads of problems it has created, strongly condemn the apathy of this service to the problem. Doubletalk, oversimplifications and plain passing the buck should not satisfy this subcommittee and those of us with desperate hopes for long overdue solutions.

In closing, I must remind the Immigration Service that it has the authority to enact regulations governing residence and employment of commuters. The Secretary of Labor has the power to prevent the admission of a commuter coming to employment in the United States which is harmful to American labor. And certainly, 40 years and the blood, the sweat and the suffering of so many forgotten people should be more than enough to move the conscience of our great U.S. Congress.

Senator MONDALE. Thank you very much, Mr. Guerra, for very, very useful testimony.

You say at one point that the responsibility for enforcing the regulations that do exist, as tenuous as they are, is one which really isn't found anywhere.

Mr. GUERRA. That is right.

Senator MONDALE. If you go to the Immigration Service, they tell you to come to Congress. If you go to the Congress, mostly nothing happens, but many will say there is enough power in INS to deal with it.

The Immigration Service claims they don't have the personnel to enforce their own regulations that created a situation where only a few commuters could come within the regulations in any event.

There is a widespread practice of fraudulent claims; the exemption from color certification status of really most of the people now getting the green cards. Additionally, we see the use of baptismal certificates, fraudulent birth certificates, fraudulent claims of marriage, fraudulent claims of relationship to a person who now holds a green card, a standard which has been developed for residence which really doesn't mean residence at all, but merely a desire for a job on our side.

The situation has finally reached the point where, in your opinion, we are worse off than we were before we eliminated the bracero program.

The rules now have resulted in a virtually unlimited flow of desperately poor Mexican residents commuting on a daily basis to be used widely in breaking up strikes.

Would that be an accurate presentation?

Mr. GUERRA. Very much so.

Senator MONDALE. I am pleased Senator Javits has joined us. He has shown a great deal of interest in this issue, and in the issue of decent working conditions and the right to bargain on the part of the farmworkers.

Senator Javits has worked to make bipartisanship a working fact of American Life.

Senator JAVITS. I would like to make the observation that I did not have the opportunity to hear those who testified when I was upstairs turning out some bills in executive session.

But I did want to make this point. We do feel that if there are abuses with respect to the green card, they must be corrected. Also, it seems to me we have a real obligation to concern ourselves with labor problems that may be created in border areas as a result, and I think that we have to find some way of balancing the equities of those who look to the so-called commuter labor as a source for operating the economy in that area.

Also, we must look to the interests of the commuter and of the community and of the American worker, but the only point I wish to make is, notwithstanding my very deep sympathy with straightening out these excesses, which I think are quite shocking, I think we also will have to assure ourselves that we are not irremediably damaging the economy.

That doesn't mean that the economy can be static and only look to the green card carrier as a source of labor without making conditions and compensation attractive enough to bring others in, but as with the wetbacks, both Senator Mondale and I had experience with them. We must have some consciousness of what it is going to mean economically, and how it could work out if fair wages and fair conditions were made available.

It is possible that even then there might not be enough labor in that area for those particular types of work which are justly available, and that, therefore, different types of reforms which would guarantee against exploitation of the green cardcarrier and also against exploitation of other American workers for the uses to which the green cardcarrier is put.

So I would hope, Mr. Chairman, as we get the testimony, and from our staff, that we also have a very clear view of the economy of these areas and what would happen under the given hypotheses of reform.

Because I think if we go to the floor with anything else, we will be challenged, and perhaps successfully, that we are not paying attention to the economy which is involved.

Senator Mondale. I would refer the Senator from New York to some figures that were presented this morning by former Assistant Secretary Ruttenberg of a study made along the Texas border which show a very high unemployment rate of U.S. labor, and really a heartbreaking series of facts about living and working conditions.

I have never heard of the availability of those figures before, and I think they bear upon this perfectly valid point to which you make reference.

Senator Javits. Would it be possible, Mr. Chairman, to check this out on the ground?

In other words, could we shake loose enough of the minority and the majority staff to check out conditions on the ground, or perhaps invite testimony from the area?

Senator Mondale. I think that is important. Mr. Guerra, of course, is a practicing attorney from Starr County. We have looked for some economists in the country who are specialists in this field.

One of the remarkable things that I think helps express in a strange way the powerlessness of the farmworkers is that we have spent 3 or 4 months trying to find economists to come in and give a professional opinion of this.

I think we have found one at the University of Indiana.

Maybe Mr. Guerra can give us his views.

Mr. Guerra. I appreciate very much the concern of Senator Javits, with the economy, the impact that the commuter problem has on the community, and the impact that the different solutions to the commuter problem will have on the economy.

Let me start off by reminding everybody that, let us say, 45,000 to 150,000 commuters have the direct effect of causing a like number, if not a larger number of our local border residents to migrate for seasonal employment in other States. I cite as an example the conditions in my area, the Rio Grande Valley of Texas, where 40,000 up to 80,000 migratory workers have to leave their home every year, take their children out of schools, to be able to compete in the labor markets up north and everywhere else, because they are displaced by the commuters.

If our local people were given the incentive to remain in the area, it would certainly not affect the spending power at all that would be lost by the commuter who might be forced to come to this country or stay in Mexico.

That is one of the problems.

Now, as to the very much harped upon effect that supposedly would take place if you enforce permanent residence on the commuters in the United States to the effect that it would close the border, all I can say is that it is an old wives tale. It is incredible to say that the billion dollar economy that we have would be affected by these 40,000 or 50,000 people, commuters, and to justify not doing anything by saying that touching them would ruin the economy.

The reason I say that is that the border is not going to close just because of the commuter, regardless of how we approach it.

I will use the Mexican Government's approach to their problem. I have with me an article which just came out on May 20 in our local newspaper, where the Mexican Government is continuing the practice of sending to the border customs agents to insure that no merchandise is purchased during a certain period of time in our U.S. border cities because the merchandise is affecting the industry and the workers of Mexico, and they didn't have any hearings to determine what they should do.

They realized that they had to do this for their industry and their workers, and they did it, and I am sure that to them the commuter problem is not that great.

Senator MONDALE. Mr. Guerra, do you have a copy of that article?

Mr. GUERRA. Yes.

Senator MONDALE. When I was along the border, I talked to a carpenter and asked him how working conditions were. This was a U.S. citizen.

He said, "If we could work on the other side of the border, there is a lot of construction labor needed down there. But if we try to go back to Mexico, we are arrested and immediately returned."

Mr. GUERRA. That is correct.

Senator MONDALE. In other words, the concern about having a free and open border apparently is a one-way proposition,

Mr. GUERRA. Here is something I mentioned, and I am glad to see Senator Williams here, because he was in Rio Grande City also, and he was instrumental in giving us some hope in that area, in the subcommittee hearings there in 1967.

One of the issues that I raised, and which apparently is always lost in the shuffle someplace is the effect this commuter system has on the forgotten creature who is worse off than anybody we know. The Mexican farmworker, the Mexican laborer who has no hope of ever entering our great mecca.

You asked, Mr. Chairman, what was the minimum wage of this Mexican farmworker. I will give you the maximum wage. A farmworker can expect to earn in my area, and all the way to El Paso and all along the Mexican border, the most he can expect by working from sunrise to sunset is the great sum of $1.60 a day.

Senator Javits. How does he get in. How is he there at all?

Mr. Guerra. I am talking about the Mexican worker who remains in Mexico. The Mexican worker in Mexico who cannot ever enter this country.

Senator Mondale. He is lucky to make $1.60 a day.

Mr. Guerra. He is lucky to make that. As you go deeper from the border, he may get 80 pesos a day.

The reason I mention this point, when you start talking about economy and how it affects business, when the chambers of commerce and all these great associations with thousands of members representing millions of dollars, when they talk about their loss, I wish to remind you of the silent voice of those poor people who live along the border in Mexico and have no possible way of entering this country, who are living now in a dollar economy, who have to compete for the necessities of life, when they earn not more than $1.60 a day, when their own brethren who return every day to their homes have $4 or $5 to spend.

I see those creatures daily. You will never see them, you will never hear them, because they cannot talk. They are the ones if we talk about poverty, that we should recognize and do something about.

Senator Javits. May I ask another question, Mr. Chairman?

The thing I think the regulations would appeal to the most in Congress would probably be one requiring bona fide residents in the United States by the commuter—in other words, he either lives here, or lives there. If he lives there, he can't be a commuter. He can't be a green card holder. He is going to be a regularly admitted alien. He has made his commitment, and he has to live essentially here. He may go out of the country from time to time, he is not a prisoner, but he has to live here. He has to have bona fide residence in the United States.

If you do that, then you would avoid much of what you complain about, but you would have the competition of the regularly admitted alien, but he would be subject to American conditions, American unionization, but we all hope to put into effect, American taxes——

Mr. Guerra. That is all we ask.

Senator Javits (continuing). And he wouldn't be hurting prices across the border for his poor brother, the campesino.

Wouldn't that be in your judgment, not an optimum, but a reasonable solution?

Mr. Guerra. Yes, Senator, and it could be done, as Mr. Ruttenberg stated earlier, by phasing it out.

I don't want to go back home and be accused, as I was a few days ago in a Mexican paper in Monterey, that we were fighting brother against brother.

I represent no one here but myself. My business is alien to anything connected with labor, to anything connected with what is going on here. I only came because I thought I should speak out.

The last thing I would like to do is see my own race pitted against each other.

I feel as a Mexican, to differentiate him from the Mexican-American, needs great help, but I feel what I am asking for, and what most

Mexican-Americans ask for, contemplates in no way hurting the Mexicans.

It would make it easier for us and easier for industry also.

We recognize the need for industry and agriculture, but we would like to have something equitable, and I think your views, Senator, would create that.

Senator MONDALE. I think we know enough about labor relations and the history of them to know that the most volatile predicament of all is a surplus labor situation where you have a massive and virtually inexhaustible supply of poor people fighting anybody else for a job in desperate conditions.

In all of the history of labor relations, that is the most explosive condition. That is what you have as a daily fact of life all along the Mexican border.

Mr. GUERRA. That is what we have. and you saw it perfectly. I think Senator Williams may have seen it when he was there 2 years ago. What you see is a very captive labor force, the most captive labor force you can find anywhere, when they come to the border and wait on the American side for somebody to come to pick them up to go to work.

This is the system that is so bad. You are hurting that man just as much as you are hurting our American people, our residents. It is an incredible thing.

You yourself see it every day in effect.

Senator JAVITS. As a lawyer, is there any possibility for administrative relief? Could an interpretation be made by the Immigration Service that only a bona fide resident of the United States who showed by his actions and declared an intention to live here permanently, is entitled to carry the green card, and therefore that after a certain date, unless you have a bona fide home establishment and spent x percentage of your total time in the United States, which includes your work time, you will not be considered a bona fide immigrant?

Is that possible by administrative means?

Mr. GUERRA. I have maintained in my testimony today that the Immigration Service and the Labor Department both have the authority to accomplish that purpose. The problem we have here is that the Immigration Service has refused to recognize they have that authority. I think we can call it a fear to take it upon themselves. I think they fear their heads would roll, probably, if they come out and enact regulations to curb the commuters.

The reason I say this, Senator, is that I have explained previously that there is a way in which the commuter can be controlled. Commuting is a privilege. For him to remain a commuter, he must show that he has not been unemployed in stable employment for a period of over 6 months. This is the formula the Immigration Service started in 1927. They equated domicile of the green carder to employment, and they define employment as stable and permanent employment, but they have refused to implement this weapon they have.

My question is, "Why?"

Senator JAVITS. We will try to find out, and I would certainly join with my colleagues to bring them down to accounting to us as to why this has been allowed to go on.

Senator MONDALE. They have taken the position, apparently in the Justice Department, to the effect that Mr. Guerra said. And they said when we passed the 1965 Immigration Act, we were mindful of the practice, and therefore incorporated it by reference.

I think, as the Senator from New York knows, that that was one of the most tenuous legal theories that one could go on, to let our legislatures ratify illegality when they adopt a ruling not dealing with the subject, but in the same generic area. That is basically the thin position of the Justice Department.

Mr. GUERRA. The laymen in my area call it passing the buck, Senator.

Senator JAVITS. Thank you, very much.

Senator MONDALE. Senator Williams, who has given more leadership to this topic than anyone else, and who now leads the fight as the chairman of the Labor Subcommittee is now doing work this morning on construction safety legislation is here.

We are glad to have you.

Senator WILLIAMS. Thank you, Senator. I appreciated your comments, too, and I am glad to be here this morning.

I did, unfortunately, have to be there at an executive session of the Labor Subcommittee, and I didn't hear all your statement.

It seems to me we were moving in the right direction here in Congress when we did let Public Law 78 reach its extended conclusion.

But we speak about loopholes a lot around here. Evidently in practice a loophole has developed with the green card situation, and yet it is not a legal loophole, as the chairman has so very clearly stated.

It is not legal. It is an administrative loophole that can be administratively closed.

Is that what the essence is of our situation with respect to green card holders?

Mr. GUERRA. Yes, sir; entirely.

In fact, Senator, if I may comment, some testimony given to the Commission on Western Hemisphere Immigration, in that testimony the Immigration Service, one of the lay officials of the Immigration Service testified that the reason it was easy for them and for the community as a whole to accept the official abolition of Public Law 78, the bracero program, was because this other labor force had been created already, and braceros weren't needed as badly.

So in essence, we have substituted the commuter for the bracero, under worse conditions.

Senator WILLIAMS. I would just offer the observation that Senator Mondale lead this committee into this examination, and it should certainly come home to the executive departments that this is one of our basic concerns.

Senator MONDALE. I was shocked to hear today that the Secretary of Labor has approved admission of foreign nationals in the citrus industry again in Flōrida. Here we go again.

Thank you, Senator Williams.

We are most grateful to you for your testimony today, and also for the fact that your interests are such that you would come here on your own time and at your own expense and would sit through all the hearings and would help us bring some of the issues into focus.

It has been far better because you have been willing to do so. You are one of the people, I think, who has shown a remarkable grasp of the technical details of this issue, and yet are able to draw conclusions which can only come from a lifetime of interest and effort.

We are most grateful to you for your contribution. Thank you very much.

Mr. GUERRA. Thank you.

Senator MONDALE. The subcommittee stands in recess, subject to call of the Chair, and the Chair orders certain documents to be placed in the record at this point.

(The material referred to follows:)

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IMMIGRATION LAW AND RURAL POVERTY — THE PROBLEMS OF THE ILLEGAL ENTRANT

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IMMIGRATION LAW AND RURAL POVERTY—THE PROBLEMS OF THE ILLEGAL ENTRANT

Sheldon L. Greene*

> *"They were making them take their shoes off in order to plant celery during the winter months when it was very cold. Anyone who did not want to would immediately be fired . . . . I told them to come with us into the union so that they would have someone to protect them. And he told me that La Casita Farms was paying $1.00 an hour, that that was sufficient money to live with in Mexico . . . . And that is the reason for the workers that come here as strikebreakers because for them $1.00 is sufficient to live in Mexico with."* Statement of Baldemar Diaz, farmworker; Migrant Labor Subcommittee, Senate Committee on Labor and Public Welfare, Hearings Rio Grande City, Texas, June, 1967, 90th Cong., 1st Sess, pt. II, 372.

In 1966, the domestic farmworkers' wages were under one-half the average which prevailed in industrial employment,[1] yet agricultural labor has been excluded from many of the basic benefits designed to assuage the impact of poverty, such as unemployment compensation and coverage under the National Labor Relations Act.[2] Efforts at unionization have failed recurrently because of the transiency of farm work, the mobility of farm laborers, and most important, the ready supply of replacements. The difficulties experienced by unions in the Southwest are in no small part due to the steady influx into the domestic labor market of inexpensive, non-resident Mexican labor. This article will consider deficiencies in the current immigration laws and in the enforcement of the law by the Department of Justice and the Immigration and Naturalization Service contributing to the easy, and for the most part, illegal entry of the Mexican, non-resident alien into the labor market of the Southwestern United States.

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[1] Recent Bureau of Census figures place the median family income of farmworkers at $2600 in contrast to the overall United States median family income of $6900. United States Department of Agriculture, Agricultural Economic Report Number 121, Domestic Migratory Farmworkers 22 (1967).

[2] "[A]ny individual employed as an agricultural laborer . . ." is exempted from the act. National Labor Relations Act, 29 U.S.C. § 152(3) (1964).

History

The first "contract labor" law was enacted in the United States in 1885[3] due to concern over the impact on domestic labor of high pressure recruitment of foreign workers by American industries. Importation of aliens under contract was prohibited except for temporary residents or persons with special skills not available in the United States. However, formal immigration and illegal entry by Mexicans in the Southwest has continued to disrupt efforts to obtain higher wages and job security.[4] With the onset of World War II, many domestic farmworkers were drawn to better paying city jobs, creating a labor shortage in agriculture. In 1942, Mexico and the United States established conditions of entry for Mexican agricultural workers, initiating the bracero program.[5] Under this plan Mexican workers could not be employed to displace domestic workers at reduced wage scales but were to be paid at least a guaranteed minimum wage. Due to manifest racial discrimination, the Mexican government prohibited the exportation of braceros to Texas, in 1943.[6] However, to meet the needs of Texas farmers, the Immigration and Naturalization Service tacitly permitted a wetback labor force to work on Texas farms with impunity.[7] With the termination of the emergency labor program in 1947, the United States accorded legal status to the thousands of wetbacks who had illegally entered Texas.[8]

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[3] Act of February 26, 1885, ch. 164, 23 Stat. 332. A study conducted in 1890 disclosed wholesale evasion of the contract labor law prohibitions and led to further restriction. Act of March 3, 1891, ch. 551, 26 Stat. 1084.

[4] Between 1880 and 1930, above 1.5 million persons immigrated from Mexico to the United States. *See generally* 1967 IMMIGRATION AND NATURALIZATION SERV. ANN. REP. 60.

[5] Migration of Mexican Agricultural Workers Agreement with Mexico, Aug. 4, 1942, 56 Stat. 1759 (1942), E.A.S. No. 278. Revisions to the original agreement were made in Migration of Mexican Agricultural Workers Agreement with Mexico, April 26, 1943, 57 Stat. 1152 (1943), E.A.S. No. 351. Authority for the utilization of foreign labor was memorialized in Act of April 29, 1943, ch. 82, 57 Stat. 70. Between 1942 and 1947, 347,000 alien workers were employed in the United States under the auspices of the bracero program, of whom 219,500 were Mexican. *See* PRESIDENT'S COMMISSION ON MIGRATORY LABOR, MIGRATORY LABOR IN AMERICAN AGRICULTURE 38 (1951) [hereinafter cited MIGRATORY LABOR (1951)].

[6] *See* Scruggs, *Texas and the Bracero Program 1942-1947*, PAC. HISTORICAL REV., August, 1963, at 254 [hereinafter cited as Scruggs, *Bracero*).

The bracero program was continued pursuant to an agreement between Mexico and the United States which allowed admission of aliens in accordance with the regulations of the Attorney General.[9] However, Texas farmers balked at the minimum wage and the bond requirement insuring return of the worker to Mexico and for the most part chose instead to rely on illegal entrants.[10] In 1949, Public Law 78[11] formalized the previous agreement providing for recruitment, reception, transportation, and guarantees to workers. The law broadened the conditions protective of domestic labor, requiring reasonable efforts by growers to attract domestic workers prior to certification by the Labor Department of the need for foreign labor. Due to growing concern over the impact of the bracero program on domestic labor,[12] Congress refused to renew Public Law 78 in 1963. However, braceros continued to be introduced under the authority of 8 U.S.C. § 1101(a)(15)(H)(ii), which provided for the temporary admission of transient workers.[13] Workers were admitted on the application of an employer in the absence of certification by the Department of Labor that their importation would adversely affect domestic workers and on satisfaction by the grower of certain criteria consistent with previous international agreements. Ultimately, as a result of litigation reflecting dissatisfaction with the administration of its certification procedure, the Department of Labor agreed to disclose pending applications for foreign labor and to hold informal hearings prior to subsequent certifications. Due to the failure of California tomato growers to meet the preconditions required by the regulations, the Secretary of Labor announced that no braceros would be admitted in 1968.[14]

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[7] *See* Scruggs, *The U.S., Mexico, and the Wetback 1942-1947*, PAC. HISTORICAL REV., May, 1961, at 150-52 [hereinafter cited as Scruggs, *Wetback*].

[8] Act of April 28, 1947, ch. 43, 61 Stat. 55. *See generally* MIGRATORY LABOR (1951), at 39.

[9] Migration of Mexican Agricultural Workers Agreement with Mexico, Feb. 20-21, 1948, 62 Stat. 3887 (1948), T.I.A.S. No. 1968.

[10] *See* Scruggs, *Bracero*, at 261-63.

[11] Act of July 12, 1951, ch. 223, 65 Stat. 119.

[12] Despite paper safeguards for domestic labor, President Kennedy, signing the final extension of Public Law 78 in 1961 commented: "The adverse effect of the Mexican farm labor program as it has operated in recent years on the wage and employment conditions of domestic farm workers is clear and cumulative in its impact. We cannot afford to disregard it. We do not condone it . . . ." *Hearings on a Study of Population and Immigration Problems Before a Subcomm. of the House Comm. on the Judiciary*, 88th Cong., 1st Sess. 41 (1963). Between 1947 and 1963, the year Public Law 78 expired, 4.3 million braceros entered the United States to perform farm labor. U.S. DEP'T LABOR BULL. EMPLOYMENT SECURITY, FARM LABOR SERV., FOREIGN WORKERS ADMITTED FOR TEMPORARY EMPLOYMENT IN UNITED STATES AGRICULTURE (Jan. 1963).

[13] Temporary foreign labor is imported pursuant to 8 U.S.C. § 1101(a)(15)(H) (1964) only when the prospective employer has satisfied criteria established by the Secretary of Labor in 20 C.F.R. § 602.10 (1968) for recruitment of domestic farmworkers locally and interstate prior

Illegal Entry

Throughout the post-war bracero program, illegal entry from Mexico continued unabated. The earlier Texas accommodation of

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to a determination of their non-availability. An employer makes a written request for certification describing his efforts to obtain United States workers. The local office of the Bureau of Employment Security must conduct an independent investigation prior to issuance of a certification. The Bureau must find that the employer has offered the following to domestic workers: housing, workmen's compensation insurance, a guarantee of at least ¾ of the work days of the total period during which the work contract and extensions are in effect at an established minimum hourly basic wage ($1.68 in California). Further, it must find that the employer has abided by state and local labor, health and housing laws, and that the admission of foreign workers will not result in the violation of policies of the U.S. Department of Labor governing the referral of workers to jobs involved in strikes or other labor disputes. An additional significant ground for refusal to certify is the notification to the Labor Department by the Immigration and Naturalization Service that the employer has hired illegal immigrants "unless the employer demonstrates that he did not know, had no reasonable grounds to suspect, or could not by reasonable inquiry have ascertained that the alien worker was not lawfully in the United States."

[14] In 1967, a suit was filed on behalf of domestic farmworkers against the Department of Labor, charging the failure of the Department to adhere to its own regulations prior to certifying the importation of 8,000 braceros for use in California agriculture. A temporary restraining order was obtained, but the case was dismissed within a few days due to the execution of a settlement agreement between the Department of Labor and California Rural Legal Assistance attorneys. *Williams v. Wirtz*, CCH Pov. L. Rep. ¶ 300.15 (N.D. Cal. 1967). The agreement laid down procedures for disclosure of pending applications for foreign labor and hearings prior to subsequent certifications. Approximately 5,600 braceros were admitted that year.

In 1968 an investigation of the extent of recruitment and satisfaction of regulatory criteria by grower applicants for temporary labor undertaken by California Rural Legal Assistance indicated an almost total failure to effectively recruit available domestic labor prior to formal application for certification. The investigation also reflected multiple instances in which domestic workers were employed at lower hourly rates than were to be offered to temporary workers. *See* United States Dep't of Labor Release No. 8,971 (Sept. 24, 1968).

illegal entrants, legitimizing the status of those subject to deportation, established a dependence on the wetback by South Texas industries and agriculture which attained the status of a de facto claim of right.[15] Complicity of the law enforcement officials with local farmers was again demonstrated in 1948 when 6,000 Mexican farmworkers who crossed the border without formality at El Paso, were paroled to Texas farmers in violation of the international agreement.[16] The avoidance of the terms of international labor agreements strained relations with Mexico, which had in 1947 abrogated the labor treaty because of the continued use of wetback rather than bracero labor. Not only was the domestic Mexican labor supply disrupted but the avoidance of minimum wage and working condition standards by Texas employers represented an intolerable exploitation of the worker.[17]

In 1952, Congress took limited steps to interdict the flow of illegal entrants. Public Law 283[18] made importation or harboring of illegal aliens a felony. As a concession to agricultural interests, however, providing employment and the normal practices incident to employment was excluded from punishment under the act.[19] Two years later, the Justice Department commenced a nation-wide campaign to apprehend wetbacks and to transport them to the interior of Mexico. The sweep resulted in the apprehension of 331,000 aliens in San Antonio alone. More than 20,000 were collected in several northern cities.[20] The simple apprehension and return of wetbacks, however, has proven an ineffectual deterrent. Border Patrol officers indicate that three illegal entrants are undetected for every one apprehended.[21]

Illegal entry is a crime. Initial entry is a misdemeanor and subsequent entries are felonies.[22] Present enforcement efforts, however, often involve a waiver of prosecution for first, second and third entries.[23] In lieu of prosecution, illegal entrants are flown or transported by train or bus to the interior of Mexico.[24] Border Patrol officials attribute the failure to prosecute to the numbers involved, overburdened federal attorneys and disinterested courts. Moreover, the Immigration and Naturalization Service does not even process the initial offender as a deportee because to do so would unduly burden the limited agency hearing procedure.

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[15] *See generally* MIGRATORY LABOR (1951), at 73.

[16] *See id.* at 52.

[17] Average farm wages in 1950 ranged from a high of 88 cents per hour in California to a low of 54 cents in Texas. In contrast the Lower Rio Grande Valley, the area of highest wetback saturation, reported earnings of only 15 to 25 cents per hour. *See id.*, at 78. *See generally* Scruggs, *Wetback*, at 152.

[18] Act of March 20, 1952, ch. 108, 66 Stat. 26.

[19] Act of June 27, 1952, ch. 477, 66 Stat. 163.

[20] *See* 1954 IMMIGRATION AND NATURALIZATION SERV. ANN. REP. at Table 29; 1955 IMMIGRATION AND NATURALIZATION SERV. ANN. REP. 15.

[21] *See generally* 1967 IMMIGRATION AND NATURALIZATION SERV. ANN. REP. 11.

[22] 8 U.S.C. §§ 1325-26 (1964).

A review of the development of the wetback problem and its impact on domestic workers leads to the conclusion that the wetback invasion must be controlled. Present efforts fall below acceptable levels of law enforcement. An excessive number of violations is no justification for the failure to exercise law enforcement responsibilities. If existing facilities for processing illegal entrants are inadequate they must be expanded or a way sought to provide for expedient formal disposition, unless wholesale voluntary departure occurs. Viewed in light of the past record of cooperation with agricultural interests, the Immigration and Naturalization Service's failure to subject wetbacks to formal deportation and prosecution is ambiguous at best.[25] Yet Congress shares responsibility with the Service for the abundance of wetback labor. Additional funds could be made available to the Immigration and Naturalization Service to increase the Border Patrol and provide additional attorneys and inquiry officers to process the formal deportation of initial entrants and prosecute successive entrants. If Congress is willing to spend millions to transport wetbacks to Mexico it should be willing to finance sufficient staff to process them in accordance with the law.

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[23] Information obtained from the Western Region, Immigration and Naturalization Service, discloses that between July 1, 1967 and June 30, 1968, 149,169 prosecutions were waived.

[24] In 1967 over 17,000 aliens were flown to Mexican cities and 51,781 were transported by train to the interior of Mexico. 1967 IMMIGRATION AND NATURALIZATION SERV. ANN. REP. 14.

[25] Apprehensions in relationship to size of the enforcement staff indicate that the Immigration and Naturalization Service diligently seeks to apprehend immigration law violators but is limited by the availability of officers. Although approximately 60% of the strength of the Border Patrol is situated in the Southwest, statistics obtained directly from the Immigration and Naturalization Service indicate that manpower limitations restrict the effectiveness of the enforcement staff.

Because of the volume of immigration violations, U.S. Attorneys generally limit prosecutions in the Southwest to aggravated cases involving economic exploitation, danger to life or patent falsification of documents. Sentences meted out by the judiciary in the Southwest for immigration law violations including smuggling are light. Suspended sentences are common and time actually served seldom exceeds several months.

A deterrent to effective curtailment of wetback infilitration for which the Immigration and Naturalization Service is free from blame, is the ease with which an uncredentialed illegal entrant can obtain a Social Security card and thereby demonstrate his right to reside in the United States. Another critical factor is the exemption of providing employment from 8 U.S.C. § 1324(a)(4),[26] which makes harboring, concealing or indirectly inducing the entry of an illegal entrant a felony. A farmer or labor contractor therefore need take no precaution in employing persons who by their clothing, speech and lack of documentation are undoubtedly illegal entrants. Since the farmer encounters no risk, he freely employs wetbacks, enhancing the inducement to cross the border.

If the flow of wetback labor is to be controlled, remedial legislation is imperative. The Social Security Act should be amended to provide that if the agency has reasonable cause to believe that a person is not lawfully in the country, the applicant can be required to present indicia of legal residence prior to the issuance of the Social Security card. Such indicia might be a driver's license and/or the alien registration card possessed by every alien entitled to work in the United States under the Immigration and Naturalization laws.

More important, the exemption from 8 U.S.C. § 1324 accorded to employment of the wetback should be restricted to instances in which the employer has good cause to believe that the employee was lawfully in the United States. Presentation by the prospective employee of the alien registration receipt card and an American driver's license would be presumptive of good cause exonerating the employer from the threat of prosecution in the event that persons apprehended in his employ were in fact found to be illegal entrants. Exemplary prosecution of employers who chronically utilize wetback labor should cause employers generally to take precautions in ascertaining that prospective employees were properly in the United States. These additional measures should substantially limit the chance of employment and reduce the inducement to enter the United States.

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[26] 8 U.S.C. § 1324 (1952) provides: "(a) [A]ny person, . . . who (3) willfully or knowingly conceals, harbors, or shields from detection, in any place, including any building or any means of transportation; or (4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States . . . shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

"The Man Who Came to Dinner"

The Immigration and Naturalization Service reported in 1967 that 48,000 visitors "violated their status of admission."[27] Of the 25,000 visitors who were repatriated, most were found to have been illegally employed in the United States.[28] The entry of Mexican aliens who visit the United States regularly is facilitated through the issuance of a "Mexican non-resident alien border crossing card."[29] About 1,250,000 new cards are outstanding.[30] The card may be presented at the border and entitles the Mexican citizen to remain in the United States for 72 hours in the area contiguous to the border.[31] Violation of the conditions is difficult to discover, however, because no record is made of the date of entry and date of departure. Therefore the permit is literally a carte blanche enabling a visitor to travel freely and find seasonal employment with relative freedom from detection. Moreover, once issued, the card is valid indefinitely.[31] A recent amendment to the Immigration and Naturalization Service regulations governing the admission of visitors restricts the usual 72-hour entrant to an area 25 miles from the border. Travel outside that zone in Texas, New Mexico, Arizona and California requires an additional document reflecting the date of entry and the place of admission.[32] Admittedly, an illegal entrant might be apprehended in a roundup of wetbacks beyond the border area and be returned for having exceeded the geographical limit imposed on his visit; however, to date, no means exist to determine whether he has exceeded the 72-hour period. Curtailment of this abuse could be achieved by limiting visas or other documents of entry to one year and providing that all documents of entry must be stamped with dates of entry and departure for the purpose of ascertaining whether or not the term of stay has been violated.

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[27] 1967 Immigration and Naturalization Serv. Ann. Rep. 11.

[28] *See* United States Comm'n on Civil Rights, Staff Report, The Commuter on the U.S.-Mexico Border 16 (1969).

[29] 8 C.F.R. § 212.6 (1968).

[30] *See* United States Comm'n on Civil Rights, Staff Report, The Commuter on the U.S.-Mexico Border 16 (1969).

[31] 34 Fed. Reg. 129, *amending* 8 C.F.R. § 212.6(a) (1968), limited the area in which the Mexican citizen could remain to 150 miles from the border.

[32] "(c) *Validity*, Notwithstanding any expiration date which may appear thereon, Forms I-185 and I-186 are valid until revoked or voided." 8 C.F.R. § 212.6(c) (1969).

The Commuter

Of the three classes of aliens which compete with domestic farmworkers, the status of the commuter alien is the most esoteric. The commuter is an alien who at one time was accorded the privilege of permanent residence and immigrant status yet continues to reside in a foreign country commuting daily or frequently to work in the United States. The exact number of such commuters working in the United States is not known, estimates varying considerably.[34] Historically, the commuter developed from the existence of open borders between Canada and Mexico and the United States and the development of numerous contiguous border communities. With the establishment of national quotas in 1924,[35] the visa was established as a condition of entry. Commuter aliens were admitted without the necessity of a visa under the classification of temporary visitors for business. In 1927, however, the immigration authorities reexamined the issue and found that commuters could not be classified as business visitors but rather fell in the category of non-resident immigrants.[36]

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[33] *See* 34 Fed. Reg. 129 (1969), *amending*, 8 C.F.R. §§ 212.6(a), 235.1 & 299.1 (1968).

It has been suggested that many illegal entrants cross the border with the I-186 and then mail it back to Mexico so that in the event of apprehension the card is not confiscated and the holder can use it to re-enter. Fingerprints of applicants for the I-186 are not now taken so that the Service is unable to match apprehended wetbacks with possessors of the I-186 for the purposes of revocation. Accordingly, the actual revocations of the visitor's card reflect neither its actual abuses nor its relationship to illegal entry.

[34] It is estimated that some 90- 100,000 commuters work in Texas alone. *Hearings Before the Subcomm. on Migrant Labor of the Senate Comm. on Labor and Public Welfare*, 90th Cong., 1st Sess., pt. 2, at 617 (1967).

[35] Act of May 26, 1924, ch. 190, 43 Stat. 153.

[36] *See generally* DEP'T OF LABOR AND DEP'T OF JUSTICE, PROBLEMS, ADMINISTRATIVE PRESENTATIONS III, 88th Cong., 1st Sess. 162 (1963).

The Supreme Court in *Karnuth v. Albro*[37] found that commuters could not be permitted to enter under temporary business provisions but first had to obtain a visa. While the commuter issue could have been resolved at that point, had Immigration officials chosen to take the position that commuters were not immigrants unless they became residents, they instead promulgated a regulation which afforded commuters identification cards usable as entry documents.[38]

The classification of the commuter as an immigrant does little more than serve as a permit to work. Since the initiation of this policy, it has been established that in the event that a commuter ceases to be employed for a period of six months, his status will be presumed to have been abandoned.[39] Moreover, the commuter alien is not eligible for naturalization, not having established an actual abode in the United States for himself and his family.[40]

An alien becomes a commuter by first obtaining an immigrant visa through the consulate in a foreign country. His eligibility to obtain an immigrant visa, which accords him the "privilege of residence in the United States,"[41] is dependent upon the definitions of "non-immigrant" enumerated in 8 U.S.C. § 1101(a)(15) since "immigrant" is defined as every alien except those falling in the subsequently defined categories of non-immigrant. In 1952 Congress added to the definitions of non-immigrant, category H(ii)—an alien having a residence in a foreign country which he has no intention of abandoning who comes to the United States temporarily to perform temporary labor.[42] Under this definition it is obvious that commuter aliens making application for a visa would not be entitled to immigrant visas since many, particularly farmworkers, would fall precisely within the definition of nonimmigrant enumerated in subsection H(ii). However, assuming that the prospective commuter indicated his intention to become a resident and was not excluded under several categories of nonimmigrant, he would still be required to obtain a certification by the Secretary of Labor as a condition to entry.[43]

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[37] 279 U.S. 231 (1929).

[38] 8 C.F.R. § 166.11-.15 (1949).

[39] *In re* M.D.S., 8 I. & N. Dec. 209 (1958). The Detroit Inspection Station which processes 5,000 commuters daily requires that each entering commuter furnish a letter from an employer at six-month intervals. A call-up system is employed to make sure that commuters regularly provide the certification of continuous employment. Testimony of Walter Sahli, District Director Immigration and Naturalization Serv., in Select Commission on Western Hemisphere Immigration Part IV, Impact of Commuter Aliens Along the Mexican and Canadian Borders 180, Mar. 8, 1968 (Detroit, Mich.).

[40] *In re* Correa, 79 F. Supp. 265 (W.D. Tex. 1948); *In re* Wright, 42 F. Supp. 306 (E.D. Mich. 1941); *In re* Barron, 26 F.2d 106 (E.D. Mich. 1928).

[41] 8 U.S.C. § 1101(a)(20) (1964).

[42] *Id.* § 1101(a)(15)(H)(ii).

The certification, introduced by Congress in 1952, provided that no western hemisphere visa shall issue without the certification of the Secretary of Labor. The guaranty provided under 8 U.S.C. § 1182(a)(14) duplicated the certification required in the enactment of Public Law 78 as a condition of entry of seasonal braceros into the United States labor market. Aliens were to be excluded when the Secretary certified that sufficient domestic workers were available and employment of aliens would adversely affect wages and working conditions.[44]

The Secretary of Labor's certification responsibilities are implemented through 29 C.F.R. §§ 60.3 -.6.[45] Three schedules are included therein which enumerate categories of employment relative to availability of domestic labor. For jobs listed therein Schedule A[46] is a certification of insufficiency of domestic workers and lack of an adverse effect on the domestic labor market. An applicant for entry whose employment is enumerated in Schedule A may obtain a visa from the consul without reference to the Department of Labor. In contrast, Schedule B[47] is an enumeration of jobs requiring minimal training and skills—categories deemed by the Bureau of Employment Security to be in sufficient supply. Applicants falling within any one category enumerated in Schedule B are ineligible for an immigrant's visa and such cannot be issued by the consular official. Jobs listed in Schedule C[48] include occupations of varying skills which might from time to time be in demand. Applicants for visas falling within the job categories listed in Schedule C must submit a form to the Bureau of Employment Security which will make a timely determination of the availability of domestic workers and the adverse effect on wages and working conditions reflected by examination of the local conditions at the time of application. The regulations[49] provide that western hemisphere applicants[50] whose categories of employment are not enumerated in any of the three schedules must request certification through the filing of a form describing the alien's qualifications as well as a form listing the specific prospective employment.

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[43] *Id.* § 1182(a)(14).

[44] *Id.*

[45] 29 C.F.R. §§ 60.1 & 60.3 (1969).

[46] *Id.* § 60.2.

[47] *Id.*

[48] *Id.* § 60.3.

[49] *Id.*

While the regulations are commendable in their concept, their practical application is another matter. The refusal to certify is predicated upon the availability to the Bureau of Employment Security of diverse data supplied through the cooperation of the Immigration and Naturalization Service. Without a high level of cooperation, the certification regulation is mere window dressing. Yet failures in inter-agency cooperation are not uncommon.[51]

Under proper enforcement of the 1952 law an applicant for a visa from Mexico should not obtain entrance if the Secretary of Labor made the certification of adverse effect on, and adequacy of, domestic labor. Assuming the Secretary declined to certify harm, an immigrant visa would be issued for no more than four months' duration.[52] For the four-month period that the visa was in force, it is clear that the immigrant had the right to enter and depart freely on presentation of the visa. Prior to expiration of the visa, the Immigrantion and Naturalization Service issued the immigrant a form I-151, an Alien Registration Receipt Card commonly known as a greencard, which may be presented as a document of entry in lieu of the visa under the authority of 8 U.S.C. § 1181(b). This section authorized the Attorney General in his discretion to readmit without immigrant visa or other documentation otherwise admissible aliens, lawfully admitted for permanent residence, who depart temporarily from the United States.[53]

The Immigration and Naturalization Service, by a strained process of reasoning, construed the 1952 amendments to the

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[50] For a definition of western hemisphere applicants, see 8 U.S.C. § 1101(a)(27)(C) (1964).

[51] For an example of the breakdown in cooperation, see statement of Michael Peevey, Research Director, Cal. Labor Fed'n AFL-CIO, at Hearing Before the Select Commission on Western Hemisphere Immigration, pt. II, 25 (Feb. 9, 1968, San Diego, Cal.). From July 1, 1966 to February 28, 1967, 2,509 workers were certified on a permanent basis in an area with more than 10% underemployment.

[52] 8 U.S.C. § 1201(a) & (c) (1964).

[53] *Id.* § 1181(b).

Immigration and Naturalization Act as implicitly acceding to the perpetuation of the commuter status. Since the original 1924 Act provided that aliens "admitted as temporary visitors for pleasure" must not seek employment, the commuter must be classified as an "immigrant" and admitted temporarily for the purposes of employment. The mandate of 8 U.S.C. § 1101(a)(15)(H), which classes as a non-immigrant a non-resident alien temporarily employed, was not viewed as applicable because the commuter was a fictitious resident having once been accorded immigrant status. It was further argued that even if entering temporarily, he was not performing temporary services because he ostensibly worked on a regular basis.[54]

Analyzing the 1952 additions to the Act, the Justice Department concluded that it had the authority to continue to admit commuters under the language of section 1181(b). A decision of the Board of Immigration Appeals concluded that the practice of considering commuters as permanent residents was not disturbed by the 1952 amendments.[55] The Board reasoned that

> . . . the phrase admission for permanent residence continues to refer to a status by which the alien is granted the privilege of residing in the United States permanently as an immigrant upon lawful admission. Thus a commuter who has been legally admitted as an immigrant is entitled to receive a border crossing identification card so long as he continues in that status. Similarly, *a commuter is entitled to readmission under section 211(b)* [8 U.S.C. § 1181(b)] as a returning resident while he maintains this status and complies with conditions controlling the use of border crossing cards.[56]

Thus, this rationale would appear to view the commuter working in the United States and *living in Mexico* as a United States resident, and his daily reentry in commuting to work as the readmission of a returning resident. The absurdity of this position is apparent.

The provisions inserted in the immigration laws for the protection of domestic labor were virtually nullified and commuters continued to enter until a 1960 strike at the Peyton Packing

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[54] *See* IMMIGRATION AND NATURALIZATION SERV., OPINION OF GEN. COUNSEL NO. 56336/101 (Jan. 9, 1953).

[55] *In re* H-O-, 5 I. & N. Dec. 716 (Bd. of Immigration App. 1954).

[56] *Id.* at 718 (emphasis added, footnote omitted).

Company in El Paso, Texas. Mexican commuter labor was employed by the plant to break the strike. The Secretary of Labor issued a certification, pursuant to 8 U.S.C. § 1182(a)(14), alleging that the entry of commuter aliens for the purpose of employment at the Peyton Packing Company would have an adverse effect on domestic labor. The Immigration Department, however, refused to honor the certification, determining that it was inapplicable to reentering commuters. As a result, suit was brought charging violation of the immigration laws.[57] The court found that commuters had no status under the law as residents, and should be treated as non-residents. The waiver of former documentation found in 8 U.S.C. § 1181(b) authorizing aliens to enter upon presentation of the greencard was found to apply only to those persons who in fact had established *permanent residence* in the United States. Non-residents entering only to perform temporary labor were found to be non-immigrants within the definition of 8 U.S.C. § 1101(a)(15)(H). The Immigration Service disagreed and the Justice Department restricted the rule to the particular fact situation.[58]

On the basis of the prior favorable decision, the Texas AFL-CIO sought legal redress to require the Justice Department to exercise administrative controls over all reentering commuters.[59] The issue of the validity of commuter status, however, was circumvented by the court's determination that the Union and individual workers lacked standing to challenge enforcement of the immigration laws.[60] The decision was apparently accepted by the Justice Department as a vindication of its position.

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[57] Amalgamated Meatcutters v. Rogers, 186 F. Supp. 114 (D.D.C. 1960).

[58] *In re* J-P-, 9 I. & N. Dec. 591 (Bd. of Immigration App. 1962). "This is not to be considered as a general rule, but is to apply only to employees of the Peyton Packing Company . . . [as] determined by a Federal court decision . . . ." *Id.* at 594.

[59] Texas AFL-CIO v. Kennedy, 330 F.2d 217 (D.C. Cir. 1964).

[60] On the standing issue, the court relied, among other cases, on Tennessee Elec. Power Co. v. T.V.A., 306 U.S. 118 (1939) (rejecting an attack by private power companies against the emerging T.V.A.) in stating that, absent a congressional grant of standing, "mere economic competition made possible by governmental action (even if allegedly illegal) does not give standing to sue in the courts to restrain such action." 330 F.2d at 219. However, the *Tennessee Valley* case had previously been impliedly overruled and discredited by the Supreme Court in F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470 (1940), in which a competing radio station was found to have standing to challenge a decision of the F.C.C. to permit the construction of an additional station.

However, the defeat of organized labor by the Justice Department in the Texas AFL-CIO case was short-lived. In a hearing before the House Committee on the Judiciary, the General Counsel of the Immigration and Naturalization Service was asked how an alien commuter who had not established a residence in the United States could qualify under section 1101(a)(27) which defines a non-quota immigrant as one "returning from a temporary trip abroad." The Service fell back on the waiver of formal documentation of 8 U.S.C. § 1181(b) and argued that this section allowed commuter status since it referred not to one returning from a visit but rather to a person who has departed from the United States.[61] Congress' reaction was to precisely delete from 8 U.S.C. § 1181(b) the language relied upon by the Service to support the informal admission of commuter aliens. The qualifying language in the 1952 version, "aliens lawfully admitted for permanent residence who depart from the United States temporarily," was stricken. Inserted in its place was "*returning resident* immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible . . . ."[62] Section 1101(a)(27)(B) relates to an alien who has been previously admitted for permanent residence and who is *returning from a temporary visit abroad.* The commuter alien is not returning from a temporary visit abroad and therefore is not within that definition. It is likewise clear that the commuter is not a "returning resident immigrant"[63] either. Therefore, by its amendment Congress unequivocally excluded the commuter from the informal entry provisions found in section 1181(b).

Since commuters were deprived of the benefit of section 1181(b), they were required to comply with section 1181(a), which required as a precondition to entry a valid, unexpired immigrant visa.[64] Therefore under the law commuters were required every four months, the maximum term of an immigrant visa, to return to the consulate and obtain a new visa.[65] As western hemisphere applicants they were again required to satisfy the certification requirements.[66] This latter section was strengthened by Congress in 1965. Under the new version an *affirmative* certification by the Secretary of Labor that the domestic labor supply was inadequate and the entry of the alien would not adversely affect domestic wages and working conditions, had to be obtained as a condition to issuance of the visa.[67] Under the previous version of the law the applicant could enter unless the Secretary of Labor made a prohibitory certification.

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[61] *See Hearings on a Study of Population and Immigration Problems Before a Subcomm. of the House Comm. on the Judiciary*, 88th Cong., 1st Sess., at 163-69 (1963).

[62] 8 U.S.C. § 1181(b) (1964), *as amended*, (Supp. III, 1968).

[63] See text following note 56 *supra*.

[64] 8 U.S.C. § 1181(a) (1964) reads in part: "No immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa . . . ."

[65] *Id.* § 1201(a) & (c).

The Justice Department treatment of the 1965 amendments was simply to ignore them. In an unprecedented example of administrative solecism, the Justice Department anachronistically found that the commuter status was no longer predicated on the maintenance of a "permanent and stable job" but rather accrued to persons who entered occasionally as temporary labor.[68] In doing so the Department ignored or was unaware of 8 U.S.C. § 1101(a)(15)(H) which specifically classed non-resident aliens who come to the United States temporarily to do temporary labor as non-immigrants. The Immigration and Naturalization Service argument in opposition to this change was characterized as "based upon unsupported references to the danger to American labor."[69] The Board of Immigration Appeals asserted in response ". . . that the applicant whose status as a commuter was recognized for many years has not lost his privilege . . . ."[70] The Board failed to discuss or take into consideration the critical impact of the 1965 amendments to the Immigration and Naturalization laws.[71] The sole authority for this major expansion of the commuter class was previous decisions of the Board. Although the Immigration and Naturalization Service amended its regulation, 8 C.F.R. § 211.1(b), to exclude commuters from the use of the greencard as a reentry document, the Service continued to permit aliens to come and go freely.

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[66] See notes 44-50 *supra* and accompanying text.

[67] 8 U.S.C. § 1182(a)(14) (1964), *as amended*, (Supp. III, 1968): "Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title, (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a)(6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title . . . ."

[68] *In re* Bailey, 11 I. & N. Dec. 466 (Bd. of Immigration App. 1966).

[69] *Id.* at 471.

[70] *Id.* at 472.

[71] An indication that the Board was unaware of these changes is its footnote 2: "The

Paradoxically the only recognition of the commuter status in the Immigration and Naturalization regulations is the 1967 addition to 8 C.F.R. § 211.1(b)(1) which prohibits the use of a greencard as a reentry document "presented in lieu of an immigrant visa or a reentry permit" by an alien intending to work at the situs of a "labor dispute" involving a work stoppage or layoff of employees which has been certified by the Secretary of Labor.[72] Seemingly by its regulations, the Service is contending that the commuter status is valid except when the commuter is acting as a "strike breaker." Growing frustration with the continued availability of commuter and wetback labor to employers engaged in such disputes led to pressure for stringent inspection of dispute sites by both the Immigration and Naturalization Service and the Labor Department. As a result of such inspection, a grower and eleven commuter aliens challenged the regulation.[73] Upholding the validity of the provision, the district court accepted the argument by the Immigration and Naturalization Service that the regulations were designed to restrict the use of the greencard as a document of entry for aliens living in a foreign country.[74] The court refused to rule on the validity of the commuter system except to note that present law required an alien to obtain an immigrant visa or reentry permit for each entry into the United States.[75]

In 1968 another attack on the commuter system was launched in the courts based upon the failure of the Department of Justice to

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Secretary of Labor has the power to prevent the admission of a commuter coming to employment in the United States which is harmful to American labor." *Id.* at 471. The Board predicated this footnote on the pre-1965 certification which excluded an alien only in the event of certification by the Labor Department. *In re* J-P-, 9 I. & N. Dec. 466 (Bd. of Immigration App. 1966). After 1965 an affirmative certification was necessary to *admit* aliens entering to perform labor. See note 66 *supra* and accompanying text.

[72] 8 C.F.R. § 211.1(b)(1) (1968).

[73] Cermeno-Cerna v. Farrell, 291 F. Supp. 521 (D.C. Cal. 1968).

[74] *Id.* at 529.

[75] *Id.*

implement the 1965 amendments to the Immigration laws.[76] The government responded with a motion to dismiss in reliance upon *AFL-CIO v. Kennedy*,[77] asserting that farmworkers lacked the standing to challenge the failure of the Justice Department to comply with the 1965 amendments. The court has ordered that the motion will be regarded as one for a summary judgment. Briefs and affidavits having been submitted and the court is presently considering the matter on the merits.[78]

Aside from the pending court challenge, legislative and administrative changes in the commuter status have been proposed. One proposal recommends: (1) that all visas include a firm commitment to establish a bona fide residence in the United States; (2) creation of a new form of border crossing for aliens who wish to work in the United States and live in their own country, when their entrance will not adversely affect domestic workers; and (3) termination of the commuter status of present "greencards" holders.[79]

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[76] Gooch v. Clark, No. 94500 (N.D. Cal., filed June 25, 1968). Plaintiffs seek to compel the Immigration and Naturalization Service and the Department of Justice to comply with 8 U.S.C. § 1181(b) (1964), *as amended*, (Supp. III, 1968) and 8 U.S.C. § 1182(a)(14) (1964). Implementation of these provisions with respect to commuters would require that class of alien to possess a visa in good standing as a condition to entry requiring reapplication for a visa and recertification by the Labor Department at four-month intervals. The complaint also calls for the implementation of 8 U.S.C. § 1101(a)(15)(H)(ii) (1964), a complementary means of identifying commuters as temporary workers who have not given up their foreign residence and reclassifying persons who meet that definition as non-immigrants. The change would give persons subjected to that reclassification the option to apply for a new visa and submit to the Labor Department's certification or to seek admission only as temporary labor.

[77] See notes 59-60 *supra* and accompanying text.

[78] As in *Texas AFL-CIO v. Kennedy*, the Department of Justice relies heavily on an affidavit from the Secretary of State dealing with the adverse foreign policy implications of a ruling terminating or restricting the commuter program. Since the Secretary of State's authority in the area of immigration is limited to the issuance and revocation of visas, 8 U.S.C. § 1104 (1964), it appears that accession by the Department of Justice to foreign policy determinations as a rationalization for perpetuating the commuter status is unsupported by statute and in derogation of congressional intent.

[79] Richard M. Scammon and Stanley H. Ruttenberg, both members of the Select Commission on Western Hemisphere Immigration, made the following recommendations in a July 22, 1968 letter to President Johnson: "(1) As of a date certain, all visas issued for immigration into the United States be firmly understood to include a clear commitment by those immigrating to establish and maintain their bonafide residence within the United States . . . . (2) A new form of border crossing authorization be established, this authorization being designed for use by non-citizens who do not intend to become immigrants in the ordinary sense of the word, but who do wish to work in the United States and continue to reside in their own 'contiguous territory' country . . . . Such a work permit

An interim solution has been proposed by Senator Edward Kennedy and Congressman Michael Feighan. Their bill calls for recertification of all commuter aliens at six-month intervals to determine if their employment will adversely affect domestic workers as well as remedial legislation curtailing illegal entry.[80]

Conclusion

The efforts of Congress to protect domestic workers from the adverse impact of inexpensive foreign labor have been futile, at least with reference to the American Southwest. Abuses which Congress sought to suppress in its 1885 contract labor law thrive today in Mexican and American border towns. Illegal entry increases largely unabated. Wholesale violation of limited visitation rights continues substantially unhindered by basic regulatory restraints. Commuter aliens, including many former illegal entrants expelled in the wetback roundups of the 1950's, displace American workers on the farms and in the cities and depress wages. Clear congressional enactments curtailing and controlling the commuter traffic atrophy from disuse.

Certainly additional legislative measures and further appropriations to law enforcement agencies should provide more effective antidotes to illegal entry and would tend to improve control over visitors and commuter aliens. However, such changes are futile unless the administrative agency charged with the implementation of the legislation is responsive to the intent of

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should be issued under conditions which do not adversely affect standards of wages, hours, and working conditions in the United States and under circumstances in which resident workers are not available to fill the job in question. On issuance, such work permits should be reviewed from time to time to insure the conditions of their issuance are being observed . . . . (3) Within a grace period, action should be taken to terminate the commuter status of present 'greencard' holders."

[80] Senate Bill No. 2790 was a proposal to amend 8 U.S.C. § 1182 (1964) to require a recertification of commuter aliens by the Labor Department at six-month intervals: "Any alien lawfully admitted for permanent residence whose principle, actual dwelling place is in a foreign country contiguous to the United States and is returning from a temporary stay in such foreign country to seek or continue employment in the United States shall be admitted into the United States only if the Secretary of Labor has determined and certified to the Attorney General within six months prior to the date of admission that the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed, and if such certification has not been revoked on any ground. The provisions of this subsection shall be applicable to any aliens lawfully admitted for permanent residence, whether or not such aliens were so admitted prior to or on or after

Congress. The failure of the Justice Department to modify its position regarding the commuter in the face of pertinent amendments to the Immigration laws, the failure to enact reasonable administrative controls over visitors, and the subordination of the interests of domestic labor to the concerns of farmers has the appearance of a substantial usurpation of the legislative function. Until society is willing to accord the poor and the minorities within the United States the economic and social benefits intended by the immigration laws, this country cannot expect these groups to respect the law and to willingly participate in the ordered society which such laws seek to create.

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the date of enactment of this subsection." 113 CONG. REC. 18667 (daily ed. Dec. 14, 1967). The bill inherently ". . . provides for the revocation of a commuter alien's labor clearance, if he violates administrative regulations, such as a ban on strike breaking, prescribed by the Department of Labor and the Immigration Service to carry out the purpose of this bill." *Id.* at 18796 (remarks of Senator E. Kennedy). The bill was reintroduced jointly in the House and the Senate on March 26, 1969, by Senator Edward Kennedy and Representative Michael Feighan. Added to the measure this year is a section repealing the exemption from criminal sanction of employers who willfully and knowingly hire aliens present in the country illegally. The bill is co-sponsored by ten Senators and twenty-three Representatives. 115 CONG. REC. 3211 (daily ed. Mar. 26, 1969).

JULY 22, 1968.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: During the course of the work of the Select Commission on Western Hemisphere Immigration, the matter of the alien worker-commuter—the "green card" commuter—was discussed from time-to-time in Commission sessions. Because of the time limitations on the Commission's report, no general recommendations were made on this matter by the Commission as a whole, but hearings were held last winter to assist individual members in making individual recommendations to you and to the other Commission appointing authorities.

Hearings were held in El Paso, San Diego, Brownsville, and Detroit, and eighty-one witnesses appeared. Every effort was made to secure as wide as possible a representation of all interested parties, and we feel the four hearings did illuminate virtually every aspect of the "green card" matter. The problem is an important one and, since we were the two Commissioners able to attend almost all the hearings, we are taking the liberty of writing directly to the three authorities who appointed the Select Commission, and of writing even before the publication of the testimony taken at the hearings.

Naturally, the recommendations which follow are only our own personal views, and indeed these are not always in total agreement. Since the Commission has passed out of legal existence there can be no Commission recommendations as such, but no doubt you will be receiving letters from other Commissioners respecting these questions.

In sum, we recommend:

"1. As of a date certain, all visas issued for immigration into the United States be firmly understood to include a clear commitment by those immigrating to establish and maintain their bona fide residence within the United States."

We feel this change in our present policy is needed to make very clear that immigration is not to be interpreted as a form of "alien work permit". We understand that this has been the case in the past, but with new over-all limitations of 120,000 on the total annual Western Hemisphere immigration it seems to us manifestly unfair that any of these 120,000 be used other than for those who plan to come to this country as full-fledged immigrants, intending to live in, work in, and in fact be a part of the United States.

"2. A new form of border crossing authorization be established, this authorization being designed for use by non-citizens who do not intend to become immigrants in the ordinary sense of the word, but who do wish to work in the United States and continue to reside in their own 'contiguous territory' country."

We appreciate the problems of the border cities whose economies are largely inter-connected, and of employers who cannot find among United States residents a sufficient labor force to continue their operations, but we feel these problems can be handled by new legislation, tied in with the first recommendation above, to establish a non-citizen, non-resident work permit.

Such a work permit should be issued under conditions which do not adversely affect standards of wages, hours, and working conditions in the United States and under circumstances in which resident workers are not available to fill the jobs in question. On issuance, such work permits should be reviewed from time-to-time to ensure the conditions of their issuance are being observed.

It is Mr. Ruttenberg's view that such permits should be issued and reviewed by the Labor Department, much as that Department now issues labor certifications for workers planning to migrate to the United States. It is Mr. Scammon's view that such permits should be issued and reviewed by a board on which would serve the Labor Department, the Departments of Commerce or Agriculture, depending on the interest involved, and a nongovernment public member.

"3. Within a grace period, action should be taken to terminate the commuter status of present 'green card' holders."

We are not in full agreement as to what should be done. Mr. Ruttenberg's view is that present "green card" holders be required to become bona fide residents of the United States or transfer to a non-citizen, non-resident work permit status. Should neither course be taken within a specified time—say two years—Mr. Ruttenberg would recommend that the commuter status of any "green card" holder be terminated. Mr. Scammon would prefer to leave the status of present "green card" commuters untouched, on the grounds of the general commitment that this country has made to the "green card" holder. However, recognizing that such a course might frustrate the efforts to develop a viable solution to the commuter problem, he would recommend a longer period for adjustment—say ten years—to permit resolution of the variety of family problems involved in particular immigration situations. However, during this grace period no "green card" holder who is not now a commuter should be given commuter status.

The evidence of the hearings is that a substantial number of present-day "green card" commuters would physically move into the United States with their families if this were a requirement for their continued employment in jobs which would not—or might not—be covered by the establishment of a non-citizen, non-resident work permit. But moving is neither easy nor always possible under present policy because of concern that family members of low-paid wage earners might become public charges. Moving also implies new problems for the areas into which the immigrants might move. The current requirement that commuters move to the United States should be accompanied by a liberal policy to issue immigrant visas to their family members, if they do not already have them, and insofar as reasonable adjustment help can be given commuters it should be provided.

Finally, we are not in agreement as to the ways in which these various recommendations should be made effective. We agree that recommendation two with respect to a non-citizen, non-resident work permit requires new legislative action by the Congress. Mr. Ruttenberg, in the opinion that the status of the commuter was created by administrative action, feels that the recommendations, except for the second, may be accomplished by administrative action again. Mr. Scammon, with the view that these are matters of basic immigration policy, feels all recommendations should be implemented by legislation, since matters at this level of policy should be the object of Congressional rather than executive action.

We are, Mr. President,

Respectfully yours,

RICHARD M. SCAMMON,
Chairman, Select Commission on Western Hemisphere Immigration, Vice President Governmental Affairs Institute.

STANLEY H. RUTTENBERG,
Member, Select Commission on Western Hemisphere Immigration, Assistant Secretary U.S. Department of Labor.

XVII.—COMMUTERS

Historical Background, Legal Challenges, and Issues

Prepared for the

Select Commission on Western Hemisphere Immigration

by

The Immigration and Naturalization Service
United States Department of Justice

COMMUTERS

The aliens referred to as "commuters" are those aliens who have been lawfully accorded the privilege of residing permanently in the United States but who choose to reside in foreign contiguous territory and commute to their place of employment in the United States. The Service does not maintain statistics on the number of aliens who commute to work in the United States, but a sample count taken in January 1966 revealed that on the day the count was taken more than 53,000 aliens entered as commuters. Of these, more than 42,000 entered over the Mexican border. There follows a detailed analysis of the historical background and current status of the commuter program and a brief outline of the various issues which have been raised both in and outside the Government relating to commuters.

Commuters—Background

Historical background

People have commuted across both borders of the United States to work since the borders were established. Until 1921 there were no numerical limitations on immigration and aliens were free to come to employment in this country so long as they did not infringe the contract labor restrictions or fall within the classes of aliens excluded by law. When numerical limitations were placed on immigration in 1921, aliens resident in Mexico and Canada for more than 1 year were exempted from those restrictions and no special problems involving commuters were encountered before 1924.

The temporary legislation of 1921 was succeeded by the Act of May 26, 1924, which established a permanent system of quota allocation and control. While natives of Western Hemisphere countries were not subject to the quota limitations, immigrants from those countries were thereafter required to obtain and present immigrant visas to enter the United States. In administering the 1924 Act, commuters were first considered temporary visitors for business and were free to continue to come to their employment in this country. However, on April 1, 1927, the immigration authorities reversed their former position and declared that aliens coming to work in the United States were to be classified as immigrants.[1] This interpretation by the immigration authorities was immediately challenged in the courts but in 1929 it was upheld by the Supreme Court.[2]

In studying the problem at that time, the immigration authorities concluded that Congress had not intended to interfere with the established pattern of regular border crossings by workers from Mexico or Canada who commuted to jobs in the United States. While such aliens could obtain immigrant visas without difficulty, they would be faced with an impossible task if they were required to obtain a new visa for each daily reentry. Consequently, the immigration authorities devised a border crossing identification card which could be used by aliens who frequently cross the international boundary.[3] The issuance and use of such border crossing cards received express sanction by the Congress in the Alien Registration Act of 1940.

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[1] General Order 86 of Apr. 1, 1927.

[2] *Karnuth* v. *Albro*, 279 U.S. 231, 1929.

Thus a commuter was able to procure an immigrant visa and subsequent lawful admission as an immigrant. Thereafter he would obtain a border crossing identification card, and with that card he could enter each day to go to his job as returning to his immigrant status in the United States. This arrangement was in harmony with the established good-neighbor policy with Mexico and Canada, facilitated travel across the Mexican and Canadian borders, and avoided serious dislocations in the border areas.

The commuter program was well known to the Congress and was discussed and endorsed, by implication, in the comprehensive study by the Senate Judiciary Committee which preceded enactment of the 1952 Immigration and Nationality Act.[4] Nothing in the Immigration and Nationality Act or its legislative antecedents indicated that the Congress was dissatisfied with the commuter program or desired to change it in any way.[5] In June 1963 Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives made a comprehensive study of commuter workers and there was no indication that the committee was dissatisfied with the commuter program as it was then administered by the Service.[6] The commuter program is an administrative application of the legislative design to our Mexican and Canadian border areas. It is a unique arrangement which has functioned for almost 40 years and its special character is aptly described in the following excerpt from a decision of the Board of Immigration Appeals:

> "The commuter situation manifestly does not fit into any precise category found in the immigration statutes. The status is an artificial one, predicated upon international relations maintained and cherished between friendly neighbors."

Acquisition of commuter status

The first step in attaining commuter status is to achieve a lawful admission to the United States as an immigrant. Like all immigrants, the commuter must apply for an immigrant visa and must meet all of the requirements of the Immigration and Nationality Act. He must obtain a labor certification to show that there is a shortage of workers in the United States in his particular occupation and that his entry will not adversely affect wages and working conditions of U.S. residents. Upon admission, his entry as an immigrant is recorded and in due course he receives an alien registration receipt card, form I-151, colloquially known as a green card. This alien registration receipt card certifies his admission to the United States as an immigrant and under current regulations, it can be presented as an entry document following temporary absences from the United States of less than 1 year.[7] Under present procedures, the card has replaced the special border crossing identification card which at one time was issued to commuters.

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[3] Rule 3, subdividison Q, Par. 1, Immigration Rules of Jan. 1, 1930.

[4] S. Rept. 1515, 81st Congress, 2d sess., p. 535.

[5] Exclusion proceedings, A-7675485: Decided by the Board Mar. 16, 1954. (5 I&N Dec. 716).

[6] Study of Population and Immigration Problems, Administrative Presentations III, Admission of Aliens into the United States for Temporary Employment and Commuter Workers, Special Series No. 11, Committee on the Judiciary, Subcommittee No. 1, House of Representatives.

The commuter is readmitted upon presentation of his form I–151 when coming from his home in Mexico or Canada to his employment in the United States. Like all aliens, he is not infallibly assured of a right of reentry, since if at any time he applies for admission to the United States there is a ground of inadmissibility, he can be excluded. While infrequent, a number of such cases develop each year.

Retention of Commuter Status

An alien is entitled to commuter status only if he has a permanent and stable job in this country. If he does not have such a job, commuter status is not acquired.[8] If, after he has acquired commuter status, he is out of employment in the United States for more than 6 months, he is deemed to have abandoned his commuter status, even though he may have made temporary reentries during that period for other than employment purposes. However, the commuter status will not be lost if the employment in the United States has been interrupted by uncontrollable circumstances such as serious illness, pregnancy, or disabling injury.[9]

LEGAL CHALLENGES

The first legal challenge to the commuter program arose out of a strike at the Peyton Packing Co. plant in El Paso, Tex., in 1960. Under the then existing law, the Secretary of Labor certified that the admission of aliens for employment at the struck plant would adversely affect wages and working conditions in the United States. The Immigration Service enforced the certification except with regard to aliens who had been lawfully admitted for permanent residence and who were returning from a temporary absence, since such aliens were exempt from the bar to readmission by the statute. The Service held that commuters were within this exempt class. In the court case the presiding judge took issue with the latter conclusion. He reviewed the commuter program and took no position as to its legality. However, he held that commuters could not be regarded as returning residents for the purposes of the certification. In his view a contrary holding would "make a shambles" of the aim of the provisions of law designed to provide safeguards for American labor. The presiding judge's decision was rendered in denying the Government's motion for dismissal of the complaint and for summary judgement. However, when a proposed final judgement was presented, the presiding judge declined to issue a mandatory order against the Attorney General, since by that time the case virtually had become moot and no appeal was taken.[10]

More recently a direct assault on the commuter program was made in a law suit by a union and a number of its members challenging the legality of the commuter program.[11] The court dismissed the suit and did not reach the merits, finding that the plaintiffs did not have a legal standing to challenge the validity of the alien commuter program. In this case, with the motion to dismiss, the Government attached an affidavit from the Secretary of State which stated that termination of the commuter program would have a serious adverse effect on the relations between the United States and Mexico and Canada.

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[7] 8 CFR 211.1

[8] Exclusion proceedings A–11152100, decided by the Board May 11, 1960. (8 I&N Dec. 643 (1960)).

[9] Exclusion proceedings A–11135619, A–1132260, A–10367389, decided by the Board Dec. 12, 1958. (8 I&N Dec. 209 (1958)).

[10] Amalgamated *Meat Cutters* v. *Rogers*, 186 F. Sup. 114 (D.C. 1960).

Number of commuters

The Service does not maintain statistics on the number of aliens who commute to work in the United States since the number varies as workers give up their jobs in the United States or as new commuters are admitted with immigrant visas. From time to time a sample count is taken and the last such sampling was taken during January 1966. Set forth below is a chart showing the total number of commuters on both borders with a breakdown by regions and states in which the commuters are employed. The count in the Southwest region was taken on January 11, 1966, and on that date 42,641 commuters, of which 17,653 were employed in agriculture, entered the United States.

State	Total	In agriculture
Total	53, 329	19, 822
Northeast region [1]	4, 527	2, 169
Maine	2, 571	2, 015
New Hampshire	8	8
New York	1, 466	10
Vermont	482	136
Northwest region [2]	6, 161	-------
Alaska	1	-------
Michigan	6, 074	-------
Minnesota	30	-------
Montana	2	-------
Washington	54	-------
Southwest region [2]	42, 641	17, 653
Arizona	5, 691	3, 195
California	16, 609	10, 464
New Mexico	17	13
Texas	20, 324	3, 981

[1] Jan. 17, 1966.
[2] Jan. 11, 1966.

The number of commuters increased rapidly along the Mexican border during the years of the bracero program. U.S. employers assisted the best of the braceros in obtaining immigrant visas and status as permanent residents. These workers retained their domicile in Mexico and became commuters, forming a pool of legal agricultural workers near the border. It was this pool of available legal labor which played a major role in the termination of the bracero program.

In recent years a large number of agricultural workers enter the United States each spring and remain in the United States for several months, following the crops to various parts of the country. These workers go to Mexico during the winter months. Some take up residence near the border and continue to commute to work in the United States, while others go to homes in the interior of Mexico and do not reenter the United States again until the spring planting begins. Included in this group are some entire families. The spouse and children accompany the principal alien, with the children attending school in the United States when school is in session and attending school in Mexico during the winter months. All members of such families have status as lawful permanent residents. These migrant workers are not commuters in the generally accepted sense since they actually remain in the United States several months out of each year without returning to their homes in Mexico. Yet they are considered as commuters by those who oppose the commuter program.

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[11] *Texas State AFL–CIO* v. *Kennedy*, 330 F. 2d 217 (C.A.D.C., 1964).

At places such as San Ysidro, Calexico, and El Paso there are several hundred commuters who enter each morning to look for work on a day basis. At El Paso there are a number of employment offices (operated independently and not a part of the Texas Employment Service) within 2 or 3 blocks of the port of entry. These offices have large blackboards outside the door on which job offers are entered each day. While the job offers are generally made by local employers seeking unskilled labor for relatively short periods of time, during certain seasons of the year employers from as far away as California utilize these offices to obtain agricultural workers. While this group of commuters is comprised primarily of unskilled workers, it does include artisans such as carpenters and masons. In addition to the employment offices, the commuters gather in groups near the port of entry and prospective employers come to these groups to bargain for workers each morning. The employers follow a procedure much like the "shape-up" of stevedores at the piers in port cities. The prospective employer will look over the group of workers available and will select those he wants for his particular job. Most of the yard work and home improvement work in the cities mentioned above is done by such commuters.

It had been the position of the Service that a commuter must engage in employment which is "permanent and stable" in order to maintain his status. If that test were applied to the employment of the above workers, many would lose their status. However, in a recent decision by the Board of Immigration Appeals it was held that a Canadian, employed in Canada full time as a customs officer, could retain commuter status by entering the United States in his spare time to seek part-time work as a carpenter.[12] Consequently, under that decision the workers mentioned above are in lawful status so long as they have some employment during the preceding 6 months.

The Commuter Issues

Opposition to the commuter program

There has always been some opposition to commuters by U.S. residents who must compete with them for employment, particularly during periods of general unemployment, but until recent years there was little organized opposition. At this time there is little, if any, opposition along the Canadian border. The majority of the commuters are concentrated in the Detroit area and in that area they are union members and are well integrated into the regular work force.

Along the Mexican border the situation is quite different. There is considerable organized opposition to commuters due, in large part, to the wide disparity in the cost of living in Mexico as compared to the cost of living in the United States. The commuter residing in Mexico has a much lower cost of living than his coworker resident of the United States. The opponents of the commuter program point to this fact and argue that the commuter has little incentive to seek higher wages or better working conditions.

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[12] Exclusion proceedings A-13959481, decided by the Board Aug. 9, 1965, and Jan. 6, 1966. (Interim decision 1546 (Jan. 1966)).

There is considerable opposition to the commuter program in the Mexican-American community in the state of Texas. In the west Texas area those who oppose the program are usually the skilled or semiskilled workers who are native born citizens. In the lower Rio Grande Valley and San Antonio area the opposition is spearheaded by organized labor and certain of the civil rights groups. There is little opposition in the states of New Mexico and Arizona, probably because the number of commuters in those two States is very low, except for the commuters who work in the Yuma area in Arizona. There is some opposition in the Imperial Valley in California where there are a great number of commuters working in agriculture. However, in the San Diego area there is very little opposition even though there are a large number of commuters employed in industry and service occupations. The lack of opposition in this area is due to the fact that the commuters employed in industry and service occupations are largely union members. In fact, several locals in the San Diego area hold periodic meetings in Tijuana because so many members of the local reside in the latter city.

At the present time labor organizations are attempting to organize agricultural workers in the Southwest and much attention has been focused on commuters because the labor organizers have alleged that commuters are used as strikebreakers. Although the labor organizations sought to terminate the commuter program through court action in 1963 recent news accounts indicate that stronger efforts will be made to organize the commuters.

Opposition of Mexican-American civil rights groups

Early in October 1966 Mr. David S. North, Assistant to the Secretary of Labor, was designated to prepare an agenda for a White House Conference on Civil Rights for Mexican-Americans and for Puerto Ricans resident in the continental United States. Representatives of the Service were requested to participate in the preliminary planning sessions dealing with problems of the Mexican-American community. At a planning session held on October 20, 1966, at the Department of Labor, the Associate Commissioner, Operations, met with a number of leaders of the Mexican-American community from the states of Texas, Arizona, and California. That part of the session devoted to immigration problems was taken up entirely with the discussion of the commuter program. All of the Mexican-American leaders present expressed opposition to commuters per se but the most outspoken opponents were the labor representatives and the representative of the Bishops' Committee for the Spanish Speaking from San Antonio, Tex., who stated they would press for termination of the program. At this time it appears that the problem of commuters will be included on the agenda of the White House Conference which is now scheduled to be held early in 1967.

Since that planning session of October 20 it appears that there has been some change in the thinking of those participants who were the most outspoken opponents of commuters. The newspaper reports of a meeting held on Sunday, November 27, 1966, at Rio Grande City, Tex., quoted a representative of the Bishops' Committee for the Spanish Speaking and one of the labor leaders who had been present at the planning session. At the meeting at Rio Grande City those attending the meeting were urged to be tolerant of the Mexican commuters.

Position of the Department of Labor

In recent years the Department of Labor has taken an increasing interest in commuters. The program has been discussed a number of times at meetings between representatives of the Service and representatives of the Department of Labor, primarily concerning the allegations that commuters have been used as strikebreakers and allegations that in some areas the presence of commuter workers has a depressant effect on wages and working conditions. At a meeting on December 6, 1966, held at the Department of Labor, the Department of Labor representatives requested the Service to consider whether some restrictions on employment of commuters could be established with a twofold objective. The Department of Labor would like to prevent the employment of commuters (1) at any place where a labor dispute exists, or (2) at any place where a determination is made that the employment of commuters would adversely affect wages or working conditions.

In order to accomplish the objectives sought by the Department of Labor, it it would be necessary to promulgate a regulation (1) barring the entry of commuters who are going to a place where there is a labor dispute or (2) going to employment in an area where the Secretary of Labor has certified that the entry of aliens to accept employment would adversely affect wages and/or working conditions. Since commuters are considered as returning residents, any such regulation would have to apply to all persons lawfully admitted for permanent residence who are seeking to reenter the United States. It is possible that a legally defensible regulation could be promulgated to accomplish the first objective. This regulation would have to be keyed to the provision which waives immigrant visas for returning residents in possession of form I-151, alien registration receipt card, and in essence it would deny the benefits of the waiver to an alien seeking to reenter the United States for the primary purpose of seeking employment or returning to employment at a place where a labor dispute exists. As it would not be practical for the commuter to obtain an immigrant visa for each return to the United States, he would be forced to comply but he would not be precluded from obtaining other employment, however, and could retain commuter status by changing employment. Even though such a regulation were issued, there would be serious operational problems which could negate the intended effect of the regulation. It would be very simple for a commuter to take up temporary residence in the United States for the period during which the labor dispute was in progress. Since the commuter would not be barred from entering to seek other employment, once admitted for that purpose he would then be free to remain here and go back to work at the strikebound plant if unable to find other employment.

The second objective sought presents greater difficulties. The Secretary of Labor would have to certify that the entry of aliens to accept employment at certain areas would adversely affect wages and/or working conditions as a first step. Under the provisions of section 212(a)(14), no alien can be admitted to the United States as an immigrant unless the Secretary of Labor certifies that his admission will not adversely affect wages and/or working conditions of persons in similar employment in the United States. However, aliens who have been lawfully admitted for permanent residence are specifically exempted from that provision of law. Therefore, it does not appear that a legally defensible regulation such as the proposed regulation above could be promulgated to cover the second category desired by Labor.

Support of the Commuter Program

It can be assumed that the employers of commuter workers would oppose any action designed to restrict or eliminate the commuter program. In those areas where commuter workers are union members and are well integrated into the regular work force, the labor unions concerned would oppose any action which would be detrimental to their members. This would be particularly true in the Detroit area and possibly in the San Ysidro, Calif., area.

Along the Mexican border it is believed that American business interests in the border communities would vigorously oppose termination of the commuter program. These businessmen, particularly those engaged in the retail trade, rely to great extent on trade with Mexican nationals and would fear that any curtailment of the commuter program would result in retaliatory action by the Government of Mexico which could adversely affect their business. Furthermore, although commuters reside in Mexico, they spend a considerable portion of their income in the American community for goods and services. The recent news report of a study of the commuter situation at Laredo, Tex., stated that 80 percent of Laredo's retail sales, which approximated $86 million in 1966, are made to citizens of Mexico.

Department of State Interest

The Service can take no action which would seriously disrupt the commuter program without consulting with the Department of State. In the Texas AFL–CIO suit the Secretary of State submitted an affidavit to support the Government's motion to dismiss in which it was stated that termination of the commuter program would have a serious adverse effect on relations between the United States and Mexico and Canada. Subsequent to the time that affidavit was prepared, there have been two actions by the U.S. Government which have had adverse effects on the economic situation along the border in Mexico. These were (1) the termination of the bracero program, and (2) the change in customs exemptions on goods purchased abroad by U.S. residents. Consequently, any action by the United States which would disrupt the commuter program would further aggravate the poor economic situation in the border areas in Mexico and could lead to some retaliatory action by the Government of Mexico.

There are two recent developments which, although not directly related to the commuter question, highlight the importance of consultation with the Department of State before taking any action to change or modify the commuter program. After his first meeting with the President of Mexico in April 1966, the President appointed a special envoy to make a detailed study of the Mexican border area with the objective of improving trade relations between the two countries as a step toward improving the economy of both sides of the border area. In addition, the Joint Presidential statement of April 16, 1966, called for the establishment of a Joint United States-Mexican Commission on Economic and Social Development of the Border Area to study conditions in the border area and come up with recommendations to improve the standard of living on both sides of the border. In an exchange of notes between the two countries completed on December 5, 1966, it was agreed to establish such a joint commission and on January 17, 1967, the President announced the appointment of Mr. Raymond Telles, of El Paso, as Chairman of the U.S. Section.

XVIII.—THE "COMMUTER" PROBLEM AND LOW WAGES AND UNEMPLOYMENT IN AMERICAN CITIES ON THE MEXICAN BORDER

Prepared for the

Select Commission on Western Hemisphere Immigration

by

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THE "COMMUTER PROBLEM" AND LOW WAGES AND UNEMPLOYMENT IN AMERICAN CITIES ON THE MEXICAN BORDER

For many years the American Government has permitted alien immigrants to the United States to reside in Mexico and Canada and commute to jobs in the United States without losing their immigrant status. In effect, employment is equated with residence. This practice has been bitterly opposed by residents of U.S. towns on the Mexican border. They feel the Mexican immigrants are not really immigrants to the United States—they only enjoy the material benefits of working for U.S. wages and working conditions while living in Mexico where living standards and costs are much less. With lower living costs than U.S. residents, alien commuters are able, it is argued, to accept less pay than reasonable for U.S. residents to accept. Thus wage rates are undercut and American workers suffer.

It is not just that the commuters settle for lower wages and a lower living standard. They also avoid much of the *costs* of public services in the United States, some of which they enjoy: public highways, medical and police protection services, shopping facilities, and sometimes even schools. This further reduces the real income of U.S. residents.

Opposition to the alien commuter was succinctly expressed in a February 3, 1961, Resolution of the Texas AFL–CIO Executive Board that is typical of feeling on the border.

> ". . . the citizens along the U.S.-Mexican border . . . are the victims of the unfair competition for jobs of border crossers who commute daily . . . from the low cost-of-living areas south of the border. These people are willing to work at a wage which is insufficient to provide a decent standard of living for the American citizen living in the United States.
>
> "The 'commuters,' moreover, have at times been used as strikebreakers in an effort to destroy unions of American citizens . . .
>
> "There can be no hope that thousands of American citizens living in the Rio Grande Valley or El Paso or other border cities ever will be able to earn a living wage so long as commuting by border crossers is permitted . . ."

This paper examines readily available data that may shed some light on the extent to which U.S. residents living on the Mexican border are affected by commuters. No effort is made to discuss the legal aspects of the American Government's policy permitting commuting which has also been challenged by U.S. groups opposed to the practice. Perhaps the best discussion of this may be found in the House Judiciary Committee's 1963 publication, "Study of Population and Immigration Problems and Commuters," an unpublished paper prepared by John W. Bowser, Deputy Assistant Commissioner, Inspections, U.S. Immigration and Naturalization Service.

Extent of commuting. Unfortunately commuters are not routinely identified in the operating reports of the Immigration Service. That agency has made several special identification checks of border crossers to try and pinpoint the volume of commuting; the results of these checks are probably the best measure of commuting. The U.S. State Department and the Mexican governmental agency, Programma Nacional Fronterizo have also made estimates of commuting that yielded data roughly comparable to the I&NS survey results.

In part, some of the difficulty with understanding the commuter problem lies in the difference between the popular conception of what is a commuter and the technical, legal definition.

The general public probably would regard anyone living in Mexico and working in the United States as a commuter. Furthermore, all aliens working in the United States would also be regarded as part of the commuter problem, even though they do not commute.

In the legal sense, only *aliens* living in Mexico are commuters. United States citizens living in Mexico are not; aliens living and working in the United States are not. The situation is further compounded by the fact that most of the alien commuters have family or friends living in the United States and may themselves reside occasionally in the United States. Very frequently aliens will give U.S. addresses to their employers and may reside some of the time in the United States and some of the time in Mexico.

One other problem exists. American policy basically is designed to facilitate travel between Mexico and the United States. Many thousands of Mexican citizens are permitted to enter this country for business or pleasure with entry documents that do not permit them to work. Undoubtedly some of these visitors do work, despite the best efforts of U.S. authorities. Such illegal, wetback, workers would be regarded in the popular mind as commuters but would not appear in any official or semiofficial estimate of the volume of alien commuters. Indeed, officials of the Immigration Service would probably deny that there are many illegal commuters. But residents of border communities do not agree.

The wide difference between the popular view of the commuter problem and the legal view has been discussed to emphasize that the official statistics really only describe a limited part of a general problem. In an economic sense the public view is right. The existence of a large number of unskilled workers making themselves available for U.S. jobs serves to depress wage rates; it makes no difference whether the worker is an alien or a United States citizen living in Mexico; whether he is an alien residing in the United States; whether he enters and works legally or illegally. The impact is the same: wage rates are lowered.

The latest I&NS special survey identified about 44,000 alien commuters January 17, 1966. Almost 95 percent worked in eight border areas—El Paso, Laredo, Brownsville and Eagle Pass, Tex.; Nogales and San Luis, Ariz.; and Calexico and San Ysidro, Calif. Illustrating the fact that the alien commuters do not fully describe the economic impact of commuting, another 18,000 United States citizens lived in Mexico and worked in the United States—almost 30 percent of the total commuters. Table 1 lists various estimates of the volume of commuting made by different agencies and at different time periods; table 2 presents a comparison of alien and U.S. citizens commuting at the time of the latest I&NS survey.

TABLE 1.—*Number of Mexican alien commuters*

Major points of entry	Jan. 17, 1966 [1]		Jan. 11, 1966 [1]		May 17, 1963 [1]	May 8, 1963 [1]	January 1960 [2]	Jan. 24–Feb. 1, 1960 [1]	Mexican estimates [3]
	Total	In agriculture	Total	In agriculture					
Texas:									
Brownsville	2, 032	226	2, 552	619	1, 796	1, 729	135	------	3, 500
Hidalgo	1, 163	805	1, 000	511	366	532	-------------	------	------
Roma	208	187	146	125	89	108	-------------	------	------
Laredo	2, 581	175	2, 239	209	2, 490	2, 382	3, 000	------	------
Eagle Pass	1, 604	536	2, 195	901	1, 586	1, 037	1, 400	------	------
Del Rio	513	99	489	82	237	314	400	------	------
Fabens	274	219	267	207	307	316	-------------	------	------
Ysleta	248	137	266	115	------	------	-------------	111	------
Cordova	2, 932	80	3, 455	164	------	------	-------------	2, 273	------
Santa Fe Street Bridge (El Paso)	8, 592	590	7, 605	944	13, 492	13, 332	-------------	10, 884	15, 700
Arizona:									
Douglas	418	96	470	93	307	288	-------------	------	------
Naco	127	20	134	19	202	134	-------------	------	------
Nogales	1, 614	108	1, 392	53	1, 464	1, 854	1, 132	------	------
San Luis	4, 234	3, 583	3, 654	3, 024	1, 239	1, 038	-------------	------	------
California:									
Calexico	7, 616	6, 468	8, 098	7, 324	4, 692	5, 342	183	------	------
San Ysidro	9, 281	3, 967	8, 460	3, 134	5, 855	5, 374	15, 000–20, 000	------	15, 000
Minor Points of Entry	250	161	219	129	87	101	-------------	------	------
Grand total	43, 687	17, 457	42, 641	17, 653	34, 223	33, 867	-------------	------	------

[1] Special I&NS surveys on dates indicated.
[2] U.S. State Department estimates based on U.S. consulate reports.
[3] *Programa Nacional Fronterizo: Tijuana, B.C.; Ciudad Juarez, Chih.;* and *Matamoros, Tamps.*, Mexico, 1962. The Mexican figures probably include commuters who are United States citizens residing in Mexico.

TABLE 2.—*Workers residing in Mexico commuting to jobs in the United States, major entry points, Jan. 17, 1966*

	Total	Mexican aliens	U.S. citizens	
			Number	Percent of total
Texas:				
Brownsville	3, 503	2, 032	1, 471	42
Hidalgo	2, 561	1, 163	1, 398	55
Laredo	3, 715	2, 581	1, 134	31
Eagle Pass	2, 710	1, 604	1, 106	41
Del Rio	831	513	318	38
Cordova	4, 290	2, 932	1, 358	32
Santa Fe Bridge	12, 913	8, 592	4, 321	33
Arizona:				
Douglas	587	418	169	29
Arizona—Continued				
Nogales	1, 882	1, 614	268	14
San Luis	4, 858	4, 234	624	13
California:				
Calexico	9, 957	7, 616	2, 341	24
San Ysidro	12, 333	9, 281	3, 052	25
Total	60, 140	42, 580	17, 560	29
All other areas	1, 806	1, 107	699	39
Total	61, 946	43, 687	18, 259	29

Source: Special survey of border crossers by Immigration and Naturalization Service.

Evidence of depressed U.S. wage scales.—Comprehensive information about wage rates is not available for most border areas. Most of the border towns are very small and not included in the statistical series that contain wage rate information. The discussion that follows is based primarily upon very scattered and fragmentary information. Notwithstanding their limitations, the data do show clearly that wage rates are low in the border areas.

The presence of the alien commuters, however, is not the sole cause of low wage rates. Many factors determine wage levels—a surplus or shortage of workers; the kinds of jobs involved (higher-skilled jobs demand higher wages); the kinds of industry (usually durable goods manufacturing pays higher wages); the extent to which viable trade unions exist. In general, the factors which produce high wage rates are not found as frequently in border areas as they are in interior areas. But the factors which produce low wages are commonly present in the border towns and quite often are interrelated with the alien commuter problem.

Most of the border areas have relatively large labor surpluses, partly because of the commuters, but also because of large numbers of low-skilled U.S. citizens and resident aliens residing in the United States. Thus, not all of the low wage problem is due to the commuters.

Comparisons of area wage levels in the same state do not always reveal that wages in the border areas are always the lowest in the state. Interior areas in a border state also have large labor surpluses that cause wages in these areas to be as low, or lower, than wages in the border areas. The northeastern corner of Arizona, far removed from the border, where the poverty-stricken Navajo Indians live, is a case in point.

Some border areas have concentrations of heavy industry, or establishments where the wage structure is determined by collective bargaining agreements or other factors not primarily concerned with conditions in the border towns. In such instances, the wages in the border towns may be higher than in interior areas where no such establishments exist. But wages on the border are seldom, if ever, higher than in the interior for the same kind of work at the same kind of firm.

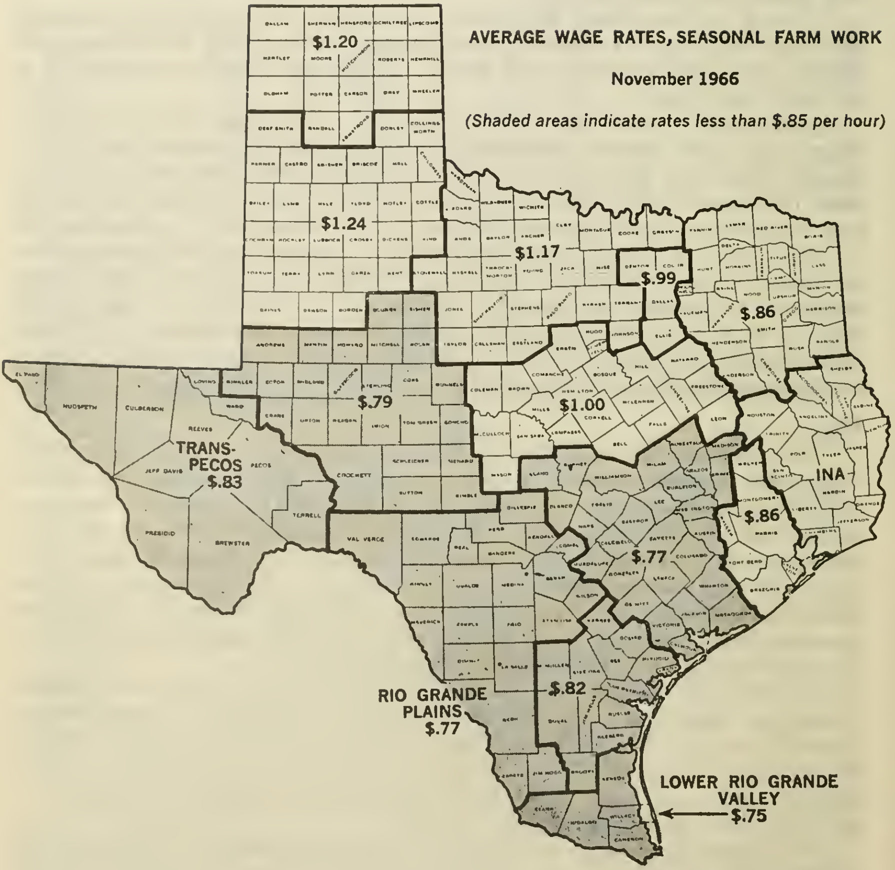
Texas

Farm wage data are available from the monthly reports of the Texas Employment Commission. Monthly estimates of average hourly earnings in manufacturing, durable and nondurable goods industries are published by the Texas Employment Commission. Median earnings data are available from the 1960 census of population for one Texas border city, El Paso, and five other major Texas cities: Fort Worth, Beaumont-Port Arthur, Dallas, Houston, and San Antonio. Two special surveys were made in El Paso and Laredo in 1961 by the Department of Labor specifically designed to explore some aspects of the commuter problem. These surveys contain information about wages in the occupations in which most commuters are employed.

A. *Farm wages.*—Farm wage rates in Texas are lowest in border areas. Average hourly farm wages for seasonal farm work in the three agricultural reporting areas on the border were $0.76 in November 1966—31 percent less than the $1.10 average in the remainder of the state. The lowest wage rates are in the Lower Rio Grande Valley, $0.75; slightly higher in the next area, Rio Grande Plains, $0.77; and highest of all the border areas, $0.83 in the Trans Pecos area.

The highest farm wages in Texas are in the areas farthest removed from the border—$1.20 and $1.24 in the Northern Panhandle and the High Rolling Plains. The following map of Texas shows the geographic pattern of average wage rates for seasonal farmwork.

Large numbers of alien and U.S. citizen commuters are employed in agriculture in the border areas. The January 17, 1966, I&NS survey identified 1,584 citizen commuters and 1,282 alien commuters in the Valley; 531 citizen and 810 alien commuters in the Rio Grande Plains; and 973 citizen and 1,078 alien commuters in the Trans



AVERAGE WAGE RATES, SEASONAL FARM WORK

November 1966

(Shaded areas indicate rates less than $.85 per hour)

$1.20
$1.24
$1.17
$.99
$.86
$.79
$1.00
TRANS-PECOS $.83
INA
$.86
$.77
$.82
RIO GRANDE PLAINS $.77
LOWER RIO GRANDE VALLEY $.75
EL PASO
HUDSPETH
CULBERSON
REEVES
JEFF DAVIS
PECOS
PRESIDIO
BREWSTER
TERRELL
CROCKETT
VAL VERDE

Pecos areas. Commuters to agricultural jobs formed a very large proportion of the commuters in the Valley and the Rio Grande Plains areas. In the former area, 51 percent of the U.S. citizen commuters and 37 percent of the alien commuters worked in farm jobs. The corresponding percentage in the Rio Grande Plains were 21 and 17 percent. In the Trans Pecos area, where most of the commuters went to nonfarm jobs in El Paso, only 11 percent of the citizens and 9 percent of the alien commuters worked in agriculture.

Commuters constituted a significant proportion of the seasonal farm work force in the border areas. In the Lower Rio Grande Valley about 15 percent of the seasonal farmworkers were commuters, with alien commuters making up about 7 percent of the seasonal farmworkers. In the Rio Grande Plains, about 9 percent of all seasonal workers were commuters, and 5 percent were alien commuters. In the Trans Pecos area almost all seasonal farmworkers were commuters. However, in this area farm work is a very minor activity—only about 1,500 seasonal workers were employed in January 1966, compared to 19,700 seasonal workers in the Valley and 15,600 in the Rio Grande Plains.

Wage rates were higher in the Trans Pecos area than in the other two border areas because of two factors: the area is isolated without a large resident farm population; the bulk of jobs in the area are found in the El Paso metropolitan area where nonfarm wage levels tend to be higher than levels in rural areas. In contrast, the Valley and Rio Grande Plains areas have no large metropolitan areas. They have a large rural population, largely composed of Mexican-Americans, both citizens and resident aliens. The level of economic activity in the latter areas is much lower than in El Paso. The low-wage levels in the Valley and the Rio Grande Plains areas are probably primarily due to the large surplus of poor, unskilled, poorly educated, rural people (most of whom are Mexican-Americans) residing in the areas. But augmenting this labor surplus by adding commuters from Mexico, persons who are even poorer, more unskilled, and less educated, serves to depress an already intolerable situation.

B. *1960 census of population median earnings data.*—Median earnings data reveal earnings of El Paso workers are significantly lower than in most other major Texas metropolitan areas. Of the 11 major occupational-sex groupings, median earnings were lowest in El Paso for four groupings (male clerical workers, female clerical, sales, and private household workers); and second lowest for three other groupings (male sales, clerical workers, and operatives and kindred workers). The highest El Paso ranked among the six areas was in the male service worker classification where it ranked third.

One other aspect of the census of population data must be mentioned. Since the data are obtained from a household enumeration, residents of Mexico are not included in the census statistics because their households were not enumerated. Thus, for El Paso, the census statistics overstate the incomes of persons that work in that city because they omit the earnings of commuters who work for the most part in the city's lowest paid jobs.

Table 3 contains pertinent median earnings data obtained in the 1960 census of population.

TABLE 3.—*Median earnings in 1959 of persons in the experienced labor force by sex and occupation*

[6 standard metropolitan statistical areas in Texas]

Occupation	El Paso		San Antonio		Dallas		Fort Worth		Houston		Beaumont-Port Arthur	
	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank
All male workers	$4, 199	(5)	$3, 725	(6)	$4, 560	(4)	$4, 657	(3)	$4, 915	(2)	$5, 207	(1)
Clerical and kindred	4, 186	(6)	4, 272	(5)	4, 543	(4)	4, 904	(2)	4, 871	(3)	5, 124	(1)
Salesworkers	4, 437	(5)	4, 414	(6)	5, 562	(1)	4, 833	(3)	5, 526	(2)	4, 776	(4)
Craftsmen and foremen	4, 691	(5)	4, 346	(6)	4, 802	(4)	5, 056	(3)	5, 374	(2)	5, 833	(1)
Masons	3, 246	(6)	3, 566	(5)	4, 334	(4)	4, 414	(3)	4, 634	(2)	5, 854	(1)
Painters	3, 505	(3)	2, 993	(6)	3, 454	(4)	3, 408	(5)	3, 605	(2)	3, 739	(1)
Operators	3, 388	(5)	2, 945	(6)	3, 861	(4)	4, 131	(3)	4, 376	(2)	5, 381	(1)
Auto service station attendant	2, 172	(4)	1, 926	(5)	2, 498	(2)	2, 527	(1)	2, 341	(3)	1, 831	(6)
Truckdriver	3, 334	(5)	3, 021	(6)	3, 892	(1)	3, 748	(2)	3, 717	(3)	3, 691	(4)
Welders	4, 595	(3)	3, 710	(6)	4, 471	(5)	4, 571	(4)	5, 343	(2)	5, 625	(1)
Service workers	2, 788	(3)	2, 362	(6)	2, 702	(5)	2, 833	(2)	2, 771	(4)	3, 486	(1)
Barbers	3, 022	(4)	3, 019	(5)	3, 519	(2)	3, 507	(3)	3, 566	(1)	2, 985	(6)
Cooks	2, 682	(5)	2, 577	(6)	2, 719	(3)	2, 685	(4)	2, 987	(2)	4, 678	(1)
Guards	3, 793	(1)	3, 051	(5)	3, 291	(4)	3, 671	(2)	3, 393	(3)	1, 808	(6)
Waiters	2, 203	(1)	1, 454	(4)	1, 856	(3)	1, 538	(6)	2, 174	(2)	1, 635	(5)
Laborers, except farm and mine	2, 386	(4)	2, 057	(6)	2, 367	(5)	2, 552	(3)	2, 903	(2)	3, 027	(1)
Manufacturing	2, 775	(5)	2, 506	(6)	2, 843	(4)	3, 322	(3)	3, 691	(2)	4, 655	(1)
Nonmanufacturing	2, 337	(3)	1, 904	(6)	2, 296	(4)	2, 413	(2)	2, 526	(1)	2, 107	(5)
All female workers	1, 836	(5)	1, 938	(4)	2, 322	(1)	1, 970	(3)	2, 197	(2)	1, 615	(6)
Clerical and kindred	2, 656	(6)	2, 865	(4)	3, 125	(2)	2, 867	(3)	3, 225	(1)	2, 748	(5)
Bookkeepers	2, 855	(5)	2, 864	(4)	3, 286	(2)	2, 805	(6)	3, 331	(1)	2, 887	(3)
Cashiers	1, 724	(5)	1, 617	(6)	2, 089	(1)	1, 762	(3)	1, 785	(2)	1, 751	(4)
Secretaries	3, 147	(4)	3, 089	(5)	3, 568	(2)	3, 269	(3)	3, 707	(1)	3, 015	(6)
Stenographers	3, 290	(6)	3, 322	(5)	3, 417	(4)	3, 607	(3)	3, 791	(1)	3, 733	(2)
Telephone operators	2, 996	(6)	3, 133	(5)	3, 353	(2)	3, 276	(4)	3, 348	(3)	3, 408	(1)
Typists	2, 601	(3)	2, 927	(1)	2, 530	(5)	2, 584	(4)	2, 707	(2)	1, 828	(6)
Salesworkers	1, 292	(6)	1, 478	(4)	1, 817	(2)	1, 460	(5)	1, 900	(1)	1, 513	(3)
Operators	1, 711	(4)	1, 559	(6)	2, 223	(1)	1, 848	(3)	1, 886	(2)	1, 576	(5)
Laundry	1, 376	(4)	1, 279	(5)	1, 544	(1)	1, 420	(2)	1, 403	(3)	1, 184	(6)
Private household	617	(6)	745	(3)	799	(2)	709	(4)	831	(1)	637	(5)
Service workers	1, 130	(4)	1, 171	(3)	1, 321	(1)	1, 116	(5)	1, 316	(2)	1, 002	(6)
Industrial attendants	1, 388	(5)	1, 588	(2)	1, 445	(4)	1, 190	(6)	1, 599	(1)	1, 485	(3)
Cooks	1, 071	(6)	1, 308	(2)	1, 262	(3)	1, 175	(5)	1, 342	(1)	1, 203	(4)
Waitresses	984	(3)	929	(4)	1, 014	(2)	906	(5)	1, 025	(1)	859	(6)

Source: U.S. Bureau of the Census, "Census of Population, 1960."

C. *Manufacturing average hourly earnings.*—Wages in El Paso manufacturing are extremely low. El Paso ranked lowest of the eight major Texas areas (El Paso, Austin, San Antonio, Beaumont, Corpus Christi, Dallas, Fort Worth, and Houston) for which the Texas Employment Commission published average hourly earnings in manufacturing.

Austin and San Antonio had lower earnings for durable goods, but El Paso had by far the lowest average for nondurable goods.

El Paso did not rank on the bottom for durable goods because it is the location of a large copper refinery and a large copper smelter. Wages in these establishments are high because the workers have effective trade unions. The refinery and smelter are branches of large corporations and collective bargaining between management and labor is on a regional basis, thus causing the unique situation of El Paso with its commuter problem to be of little importance in the determination of wages of El Paso copper workers.

Nondurable goods employment in El Paso is heavily concentrated in garment manufacturing—almost 75 percent of all nondurable goods workers are in this industry. The wage rates in garment manufacturing are little more than the minimum required by the Fair Labor Standards Act. Large numbers of alien commuters (mainly women) are employed in this industry. The existence of this industry is a recent phenomenon and many local residents believe garment firms moved to El Paso to take advantage of the large supply of labor and the low-wage scale; both conditions are due, in part, to the commuter situation.[1]

Table 4 contains average hourly earnings data in manufacturing in El Paso and other Texas cities.

TABLE 4.—*Average hourly earnings in manufacturing industries, 8 major Texas cities, 1966*

	Average hourly earnings		
	All manufacturing	Durable goods	Nondurable goods
Texas	$2.57	$2.62	$2.52
El Paso	1.90	2.46	1.72
Austin	1.98	1.71	2.26
Beaumont	3.35	3.03	3.48
Corpus Christi	$2.96	$2.57	$3.26
Dallas	2.37	2.52	2.10
Fort Worth	2.81	2.97	2.39
Houston	3.00	2.87	3.16
San Antonio	1.98	1.92	2.02

Source: "The Texas Labor Market," Texas Employment Commission.

D. *Special commuter survey—Laredo.*—A special study of alien commuter problems—jobs held by commuters, wages received, and availability of domestic workers for these jobs—was made by the U.S. Department of Labor in the summer of 1961.

The study showed that commuters were employed in most occupations and industries, but concentrated most heavily in garment manufacturing, hotels, restaurants, and retail trade and service establishments. A sample of firms employing 3,000 workers was contacted. These firms employed 438 Mexican aliens identifiable as commuters. In addition, the survey team suspected that other alien employees of these firms were commuters, although they had given U.S. addresses to their employers.

When the survey was conducted, unemployment was very heavy in Laredo—11.3 percent. Large numbers of U.S. workers had the same occupational skills as the alien commuters and were unemployed at the time of the survey. For example, the two garment manufacturing firms in the sample employed 88 alien commuters as sewing machine operators. The Texas Employment Commission office files contained applications from 156 unemployed U.S. workers with this occupation.

The survey revealed a very common pattern of firms employing alien commuters paying lower wages than did firms employing U.S. workers. From the data collected in the survey, it was possible to make comparisons of the wage rates paid for 19 occupations by firms engaged in similar activities. The firms employing only domestic workers paid higher rates for 15 of the occupations; in one occupation the rates paid were the same; and for three occupations the firms employing alien commuters paid higher rates. There were also instances where the same firms paid its alien commuters less than it paid U.S. workers for the same work. The average of the wage rates for these 19 occupations paid by the firms employing only U.S. workers was 38 percent higher than the average rates paid by the firms employing alien commuters. Table 5 lists the occupational wage data obtained in the survey.

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[1] Other border areas in Texas, Laredo and Eagle Pass, have also attracted garment firms recently. A recent economic survey of Eagle Pass reports: ". . . it seems that the factors that have drawn garment manufacturers to Eagle Pass as a production site, *conspicuously the low cost of labor*, are likely to continue in the future." (Italic supplied.) Robert H. Ryan, Charles T. Clark, and L. L. Schkade, "Bridge into the Future Eagle Pass, Texas," Area Economic Survey No. 18 (Austin: Bureau of Business Research, University of Texas, 1964) pp. 82–83. Quoted by Lamar B. Jones, "Mexican-American Labor Problems in Texas," unpublished Ph. D. thesis, University of Texas, 1965.

TABLE 5.—*Occupational wage structure, Laredo, Tex., June 1961*

Industry and occupation	Average wage rate (per week)	
	Firms employing only domestic workers	Firms employing domestic and alien commuter workers
Hotels and motels:		
Cook	$58	$34
Maid	20	17
Hall boy	25	20
Waiter	[1] 15	[1] 18
Busboy	[1] 25	13
Bartender	58	46
Bellboy	[1] 15	[1] 16
Drugstores and related firms:		
Cashier	27	12
Stock clerk	52	40
Fountain girl	16	[2] 23
Drug clerk	77	55
Grocery and related firms:		
Cashier	$24	$24
Stock boy	35	20
Produceman	45	35
Butcher	65	52
Warehouseman	37	31
Miscellaneous retail firms:		
Porter	53	35
Warehouseman	73	21
Stockman	53	45

[1] Plus tips. [2] Plus $3 meal allowance.

NOTE.—Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported; these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed for the few occupations where data were reported for each worker.

E. *Special commuter survey—El Paso.*—The El Paso special study was similar in concept and scope to the Laredo survey discussed above. The survey was made in the summer of 1961. Seventy-five firms were surveyed. At least 1,000 alien commuters were employed by these firms. However, it is believed many more were employed: some firms did not provide information about the residence of their workers. In other cases, workers identified as alien residents of the United States were probably, in fact, residents of Mexico and had provided false addresses. One garment manufacturing firm, for example, claimed none of its employees were commuters; but it ran a bus to the border to pick up workers.

For the most part, the alien commuters were employed in the less skilled and more menial occupations—busboy, dishwasher, laborer, salesclerk, maid, housecleaner, sewing machine operator. Alien commuters, however, were also employed in skilled jobs. Many worked in organized firms and were members of trade unions.

The data collected in the El Paso survey cannot be summarized as were the Laredo data (table 5). In some industries studied, all of the sample firms employed commuter aliens. In other industries, the sample firms refused to provide wage information or attempt to determine if any of their employees were alien commuters. The wage structure in other firms was determined by collective bargaining agreements negotiated on a national or regional basis and thus unaffected by commuters.

Where information was supplied, it was apparent that wage rates paid alien commuters were usually low. In about one-half of the occupations studied, the wage rates paid commuters were lower than what unemployed job applicants registered for work with the Texas Employment Commission said they would accept. These occupations were: sales men and women, cooks, laundry workers, painters, carpenters, and general manufacturing workers. In other classifications, salesclerks, kitchen helpers, packinghouse workers, laborers, and truckdrivers, the commuter aliens were paid rates commensurate with the expectations of unemployed domestic workers.

Following is a summary of the survey results:

> *Eleven construction firms.*—Six firms employed only U.S. residents; five employed alien commuters. Two-thirds of the firms employing only U.S. residents paid the union scale. Only 20 percent of the firms employing commuters paid the union scale. The lowest rates were paid by the nonunion firms that employed commuters.
>
> *Four retail dry goods stores.*—Three firms employed alien commuters. They paid lower wage rates than the firm that employed only U.S. residents.
>
> *Four wholesale and warehouse firms.*—Three firms employed alien commuters. The firm employing only U.S. residents paid the highest wage rates.

All sample firms in the following industries employed alien commuters: Garment manufacturing (11 firms); restaurants (five firms); meatpacking (three firms); and laundries (four firms). Of interest is the fact that in the one laundry where wage rate data were supplied for both alien commuters and U.S. residents, the commuters were paid less than $0.50 per hour while the U.S. residents were paid about $0.80 per hour.

Insufficient wage and employment data were obtained to make any comparison for seven transportation and storage firms; two cotton processors; and three hotels and motels.

In several industries, refineries (four firms); miscellaneous manufacturing (seven firms); and miscellaneous firms (five establishments), there was no difference in the rates paid by firms employing alien commuters and those employing U.S. workers. One refinery, two miscellaneous manufacturing, and two of the other miscellaneous firms employed commuters.

Six other retail trade firms were included in the sample, but meaningful comparisons could not be made because the nature of their operations and the occupations of the workers they employed were too dissimilar.

F. *Unemployment in Texas border cities.*—The Texas Employment Commission prepares and publishes unemployment estimates for 22 Texas cities. In 1966 these data revealed that unemployment in border towns was substantially greater than in interior cities. Laredo had the highest rate—9.6 percent. The average rate for the four border areas (Brownsville-Harlingen-San Benito; El Paso; Laredo; and McAllen-Pharr-Edinburg) was 6.6 percent, almost 95 percent greater than the 3.4-percent rate in the 18 interior areas.

High unemployment rates are indicative of labor surpluses, surpluses that in turn cause lower wage rates as employers find it unnecessary to bid up wages to attract workers. The fact that unemployment is heavy and wage rates are low in the border towns is not coincidental. Workers residing in Mexico contribute to the labor surplus by filling jobs that United States residents would otherwise have—and frequently take them at wage rates unacceptable to United States residents.

Table 6 lists 1966 local unemployment rates for Texas; table 7 compares the volume of alien commuters in January 1966 with estimated unemployment in each of the Texas border towns for the same time period.

TABLE 6.—*Unemployment rates in 22 Texas cities, 1966*

City	Rate	Rank
4 border cities	6.6	-----
Brownsville-Harlingen-San Benito	6.5	21
El Paso	4.4	17
Laredo	9.6	22
McAllen-Pharr-Edinburg	5.8	20
18 interior cities	3.4	-----
Abilene	3.6	11
Amarillo	2.9	4
Austin	2.6	3
Beaumont-Port Arthur-Orange	4.0	15
Corpus Christi	3.7	12
Dallas	2.5	2
Fort Worth	2.9	4
18 interior cities—Continued		
Galveston-Texas City	4.7	19
Houston	2.4	1
Longview-Kilgore-Gladewater	3.3	8
Lubbock	3.8	13
Midland-Odessa	3.4	9
San Angelo	3.4	9
San Antonio	4.3	16
Texarkana	3.8	13
Tyler	3.3	7
Waco	4.4	17
Wichita Falls	3.0	6

Source: "The Texas Labor Market," Texas Employment Commission.

TABLE 7.—*Texas border cities; unemployment and alien commuters, January 1966*

City	Unemployed U.S. residents		Alien commuters
	Number	Rate	
Brownsville-Harlingen-San Benito	3,020	6.2	2,032
El Paso	5,050	4.8	11,772
Laredo	3,365	12.6	2,581
McAllen-Pharr-Edinburg	4,190	6.9	1,163

Source: Unemployment data from "The Texas Labor Market," Texas Employment Commission; alien commuter data from I&NS survey, Jan. 17, 1966.

Arizona

Alien commuters do not constitute as much of a problem in Arizona as they do in Texas. Only two border towns have any significant volume of alien commuter workers—San Luis, 4,200 and Nogales, 1,600. About 400 alien commuters cross the border at Douglas and another 100 at Naco. Employment and wage data for local Arizona communities are very limited, making it difficult to evaluate the economic impact of commuters. Farm wage data are available from the reports of the Arizona State Employment Service and that agency has also published some occupational wage data for nonfarm jobs in its annual publication, "Arizona Basic Economic Data." Since Arizona has no sizable border cities, no earnings data are available from the 1960 census.

A. *Farm wage data.*—Data concerning wages for seasonal farm work in Arizona do not reveal any adverse impact exerted by alien commuters, despite a heavy volume of commuting into Yuma County where over half the farm workers employed are commuters who cross at San Luis. In the three major farming areas in Arizona, Maricopa, Pinal, and Yuma Counties, wages were highest in Yuma County, the only county where alien commuting occurs. The average hourly wage for seasonal farmwork in Yuma County, November 1966, was $1.31 per hour versus $1.29 in Pinal County and $1.26 in Maricopa County.

The reason for this anomalous situation, compared to wage patterns in other border areas, stems from unique conditions in the Yuma area. The farm work force in Yuma County for many years was dominated by Mexican aliens—Mexican contract workers admitted under Public Law 78 and/or illegal wetback workers prior to the wetback cleanup in the early 1950's. There was practically no resident domestic work force doing seasonal farm work in Yuma County. The prevailing wage rate in Yuma was whatever the Department of Labor required be paid to the Mexican contract workers.

When Public Law 78 ended in 1964, this situation changed. No longer was the labor force for seasonal farm work furnished by the Government. Growers had to compete with each other for available workers by bidding up wages. For the most part, the workers they were trying to attract were Mexican immigrants, some of whom lived in Yuma County; others lived in Mexico; and still others moved into Yuma from other areas in Arizona and California. In other areas of Arizona, the labor force was not so heavily composed of contract workers and the impact of Public Law 78's termination was not as severe; more local residents were available to replace the contract workers. Thus in Yuma there was more active competition in the wage area; this competition was successful in attracting workers, but many of the new workers were Mexican immigrants who chose to live in San Luis, Mexico, rather than in the United States.

Between May 1963 and January 1966, alien commuting increased almost fourfold, from about 1,100 to about 4,000. (Data are not available concerning the proportion of the 1963 commuters that worked in farm jobs. In 1966, about 85 percent did farm work.) Between 1963 and 1966, wage rates for seasonal farmwork in Yuma County increased 35 percent, compared to a 25-percent increase in Maricopa County, and a 10-percent increase in Pinal County where contract workers were largely eliminated prior to 1963.

B. *Nonfarm occupational wage data.*—The Arizona State Employment Service has published wage rate ranges, by county, for about a dozen occupations. Separate data are published for two Cochise County towns, Douglas and Bisbee. Although the two towns are only about 20 miles apart, there is a significant difference in the pattern of alien commuter employment. Douglas is directly on the border and about 400 aliens commute to jobs in the United States from Agua Prieta, Mexico; about 75 percent of them work in Douglas, the remainder in farm jobs in the Elfrida area, north of the city. There is very limited public transportation between Bisbee and Douglas, and very few alien commuters, or even Douglas residents for that matter, work in Bisbee. While Bisbee itself is only 10 miles from the border, the closest Mexican border town, Naco, is very small. Only about 100 alien commuters cross from Naco to work in the Bisbee area. Thus, alien commuters would have a much greater impact upon Douglas than upon Bisbee, despite the closeness of the towns.

The Employment Service data reveal lower wage rates existing in Douglas than in Bisbee, indicating that the commuter situation may have adversely affected rates in Douglas. As shown in table 8, seven occupations are listed which can be compared. Comparing the low point of the wage ranges shown for each occupation, four of the occupations in Douglas have lower rates while the other three are the same. Comparing the high point of the wage ranges, five of the occupations are lower in Douglas, one higher and one the same.

TABLE 8.—*Wage rates paid in Bisbee and Douglas, Ariz.: Selected occupations, 1966*

Occupation	Bisbee	Douglas
Staff nurse	$425 to $525 per month	$400 to $525 per month.
Stenographer	$400 to $535 per month	$350 to $420 per month.
Salesperson	$1.25 to $2.15 per hour	$1.25 to $2 per hour.
Cook	$10 to $14 per day	$10 to $12 per day.
Carpenter	$2.50 to $4.645[1] per hour	$2.50 to $4.685[1] per hour.
Auto service station attendant	$1.25 to $1.50 per hour	$1 to $1.25 per hour.
Welder	$3 to $4.70 per hour	$1.50 to $2.75 per hour.

[1] Higher rate is union scale.

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

Of the three Arizona counties where any appreciable volume of alien commuting occurs, commuting to nonfarm jobs is greatest in Santa Cruz County (Nogales is the major town in this county). The 1,600 alien commuters make up about one-third of the county's work force; over 90 percent work mainly in nonfarm jobs. In contrast, the alien commuters working in Cochise County (Bisbee and Douglas) constitute only about 3 percent of the work force. In Yuma County (San Luis is the border entry point) alien commuters make up 19 percent of the work force, but are heavily concentrated in agriculture. Over half of the farmworkers employed in the county are alien commuters, while only about 5 percent of the nonfarmworkers are alien commuters. Thus, any impact of alien commuters upon the nonfarm wage structure in Arizona would be primarily concentrated in Santa Cruz County.

Occupational wage data published in "Arizona Basic Economic Data" clearly show that wage rates in Santa Cruz County tend to be lower than in other areas. Of the nine occupations for which data are available for 12 areas in the State, wage rates in Santa Cruz County are lowest (or tied for lowest) for five occupations—clerk typist, carpenter, auto service attendant, truckdriver, and welder; second lowest for stenographer and cook; third lowest for nurse; and fourth lowest for salesperson. Table 9 lists the occupational wage data published in "Arizona Economic Data."

Mr. Ben Zweig, currently Executive Director of the Santa Cruz County and city of Nogales Economic Opportunity Community Action Committee, and formerly the American Consul at Nogales (1943–51) and Nuevo Laredo (1957–63), commented upon the commuter situation in an interesting fashion before the President's National Advisory Commission on Rural Poverty. Mr. Zweig said, "There is no doubt the daily influx of more than a thousand workers into this small community depresses wages." He went on to state commuters live in Mexico for two reasons: ". . . because living is cheaper, but also because they are unable to obtain immigrant visas for the immedi-

TABLE 9.—*Wage rates for selected occupations, by county, 1966*

Occupation	Apache and Navajo	Cochise	Coconino	Gila	Graham and Greenlee	Maricopa
Nurse (per month)	$315–$335	$400–$525	$250–$480	$400–$500	$275–$350	$420–$463
Stenographer (per month)	275–325	350–535	285–450	265–310	260–350	325–400
Clerk typist (per month)	240–260	325–410	200–400	220–265	215–260	270–360
Salesperson (per hour)	1–1. 25	1. 25–2. 15	1. 10–2	. 90–1. 25	1–1. 25	1. 10–1. 66
Cook (per day)	12–14	10–14	9–22. 50	10–16	10–12	10–18
Carpenter (per hour)	2. 25–5. 25	2. 50–4. 685	2. 50–4. 505	3. 20–4. 50	3–4	3–4. 685
Auto service station attendant (per hour)	1. 10–1. 40	1–1. 50	1. 25–1. 75	1–1. 50	1. 25–1. 75	----------
Truck driver, light (per hour)	1. 15–1. 35	----------	2. 12–3. 78	1. 50–2	1. 50–2	----------
Welder (per hour)	2. 75–4. 97	1. 50–4. 70	2. 76–4. 86	3. 19–5. 04	2–2. 50	----------
	Mohave	Pima	Pinal	Santa Cruz	Yavapai	Yuma
Nurse (per month)	$395–$420	$340–$400	$350–$400	$325–$375	$325–$475	$400–$475
Stenographer (per month)	300–325	285–350	275–300	250–325	240–320	300–335
Clerk typist (per month)	250–275	225–315	240–260	200–250	225–275	275–316
Salesperson (per hour)	1. 25–1. 50	1. 25–1. 40	1. 25–1. 75	1. 25–1. 35	1. 25–1. 35	1. 25–1. 75
Cook (per day)	12–18	14–18	9–11	10–12	10–13	16–20
Carpenter (per hour)	3–5. 13	3–4. 50	2. 50–4. 385	2–4. 25	2. 50–4. 505	2. 50–4. 385
Auto service station attendant (per hour)	1. 25–1. 50	1. 25–1. 35	1. 10–1. 25	1–1. 25	1. 10–1. 35	1. 25–1. 50
Truck driver, light (per hour)	1. 25–1. 50	1. 25–1. 75	1. 25–1. 50	1. 25	1. 50–2	1. 35–1. 75
Welder (per hour)	2–4. 25	2. 50–4. 65	2–2. 50	1. 50–2	2. 25–2. 85	2. 50–3. 25

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

ate members of their families." According to Mr. Zweig, the reason visas cannot be obtained is the commuters earn such low wages they cannot prove their families would not become public charges. If Mr. Zweig's comments are correct, we have a situation that would be ludicrous if it were not so pitiful: Mexican aliens are admitted as immigrants. They satisfy the public charge requirements of immigration policy by accepting work in low paid jobs. But the jobs are so low paid they are not viewed as meeting the public charge requirements for the workers' families.

The 1960 census also contains data relating to the low earnings in Santa Cruz County supporting the previous discussion that indicated wages in this area are among the lowest in the State. According to the census, median earnings in 1959 of Santa Cruz County male residents were $3,666—lower than any county except Apache. (Earnings in this county are depressed because of the large Indian population.) For female residents, Santa Cruz County ranked 11th among the 14 Arizona counties.

California

Large numbers of alien commuters work in California, crossing at two major points of entry, Calexico and San Ysidro. Calexico is in the rich farming area of the Imperial Valley. About 85 percent of the 7,500 to 8,000 alien commuters work in agriculture. San Ysidro is within the San Diego metropolitan area and about 40 percent of alien commuters work in agriculture with the remainder working in a wide variety of nonfarm jobs. Data concerning the occupational characteristics of the alien commuters working in nonfarm jobs in San Diego are not available, but there is no reason to suspect that such workers would be much different than those crossing into El Paso. There they worked for the most part in the lowest skilled, most menial jobs.

Data concerning wages, employment, and unemployment in border areas and the alien commuter problem in California indicate that in this state, as in Texas and Arizona, economic conditions are much worse on the border.

A. *Farm wages.*—According to data collected by the California Department of Employment, farm wages in California are lowest in the border areas. The average wage for seasonal farmwork in November 1966 was $1.42 per hour in the two border counties, Imperial and San Diego. Wage rates for similar work in the remainder of the state were 6 percent higher.

Most of the seasonal farm work in the border areas is done by alien commuters. The number of alien commuters that cross at Calexico is equal to about 90 percent of seasonal farm employment in Imperial County. Some of the alien commuters actually commute out of Imperial County to jobs in the Coachelle Valley, over 60 miles north of the border. In all, however, alien commuters probably make up about 85 percent of the seasonal work force in Imperial County. The same situation prevails in San Diego County. The number of alien commuters crossing at San Ysidro is equal to almost all of the workers employed in seasonal farm jobs in the county. Since some aliens also commute out of the San Diego County, the proportion that aliens constitute of the seasonal work force is less than 100 percent—probably about 85 or 90 percent.

There is also a significant volume of commuting by U.S. citizens residing in Mexico. About 1,600 such workers cross at Calexico to do farmwork and another 800 enter the United States at San Ysidro. It is clear that for practical purposes nearly all of the seasonal farmworkers employed in San Diego and the Imperial Valley live in Mexico.

Considering this fact, it is perhaps surprising that farm wage rates are not even lower. They are not because of the same factor present in the Yuma, Ariz., situation—the termination of Public Law 78. When this program was in existence, most of the seasonal farmwork was done by contract Mexican workers. As the program ended, farmers had to compete for whatever domestic workers were available. For the most part, these were Mexican aliens who had previously been admitted as immigrants. They accepted the farm jobs formerly held by alien contract workers at the higher wage rates employers were offering. When the alien contract workers dominated the farm labor force, particularly in Imperial County, farmworker housing was geared to the contract worker. Barracks-type housing for single male workers was the standard. Family housing for farmworkers was available only on a very limited basis. Thus when alien contract workers were replaced by U.S. citizens or alien immigrants, almost the only available family housing was in Mexico.

On the border in California, as in Arizona, the end of the bracero program increased alien commuting. But at the same time it also caused sharp wage rate increases, thus militating against—perhaps disguising is a more apt description—the adverse impact of the commuter situation. Total alien commuting jumped over 50 percent[2] between 1963 and 1966, but seasonal farm wages still increased 35 percent, one-fourth greater than the increase in wages for the same kind of work in the rest of the state.

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[2] There is reason to suspect alien immigrant commuting increased more than 50 percent. In 1963 alien contract workers employed in the Imperial Valley were permitted to live in Mexico and commute to their jobs. Some of these workers may have been counted as commuters in the 1963 I&NS survey.

B. *1960 census of population median earnings data.*—The published statistics of the 1960 census contain data for eight major metropolitan areas, one of which was San Diego. However, the area is so large that the smaller number of alien commuters would not be expected to have very much impact. The total volume of alien commuters amounted to less than 3 percent of the total labor force; those working in nonfarm jobs to only about 1.5 percent of nonfarm employment. Furthermore, the structure of industry in San Diego includes several relatively well paid industries. The Federal Government has a large naval installation in the area and several aircraft manufacturing firms are also present.

Nonetheless, there is evidence to indicate that economic conditions in San Diego are poorer than in other major California cities. San Diego ranked only fifth highest among the eight major cities in median earnings of male workers, and fourth highest for female workers. Earnings were lower in San Diego than in the largest urban areas, but higher than earnings in the interior valley cities where farming is an important activity. Of particular significance are the data for the occupations in which most of alien commuters probably work. The earnings of farm laborers, $1,621, were the lowest of all eight areas. Comparing Los Angeles and San Diego, the earnings of San Diego residents were 8 percent lower for male salesworkers; 18 percent lower for male farmworkers; 5 percent lower for female clerical workers; 8 percent lower for female salesworkers; 18 percent lower for female private household workers; and 14 percent lower for female service workers. As was previously mentioned, the census data, which are collected from households in the United States, do not fully measure the impact of commuters because they reside in Mexico. If commuters were included in the census enumeration, the census median earnings would be lower than was reported. This is demonstrated by social security program data. These data show, for 1965, that average earnings in San Diego County were seven percent lower than in Los Angeles County. However, the census data showed median earnings of all male workers to be only .2 percent lower in San Diego County. The median earnings of women workers were about 8 percent lower. Table 10 lists earnings data from the 1960 census of population.

C. *Unemployment in California border area.*—The California Department of Employment has prepared estimates of unemployment for both San Diego County and the Imperial Valley. The unemployment rate in 1966 in San Diego was 5.2 percent, somewhat higher than the Los Angeles-Long Beach rate of 4.5 percent and San Francisco-Oakland rate of 4.4 percent. In the Imperial Valley, where alien commuters form a much greater proportion of the work force, the unemployment rate was 10 percent, double the average rate for the entire state.

TABLE 10.—*Median earnings in 1959 of persons in the experienced labor force by sex and occupation—major California cities*

Occupation	San Diego	Los Angeles-Long Beach	Bakersfield	Fresno	Sacramento	San Bernardino-Riverside-Ontario	San Francisco-Oakland	San Jose
All male workers	5, 672	5, 684	5, 119	4, 498	5, 709	5, 069	5, 705	5, 998
Farmers and farm managers	3, 331	3, 731	6, 537	4, 317	4, 242	3, 796	4, 070	4, 500
Clerical and kindred	5, 259	5, 108	5, 247	4, 982	5, 179	5, 182	5, 166	5, 344
Salesworkers	5, 338	5, 828	5, 473	5, 445	5, 554	5, 216	5, 816	5, 971
Salesmen and clerks	5, 397	5, 885	5, 467	5, 481	5, 639	5, 309	5, 913	5, 909
Retail trade	4, 850	4, 940	4, 817	4, 775	4, 880	4, 552	5, 056	5, 107
Craftsmen, foremen	6, 182	6, 088	6, 035	5, 448	6, 113	5, 582	6, 223	6, 435
Carpenters	5, 803	5, 701	5, 398	5, 085	5, 907	5, 119	6, 065	6, 188
Painters	5, 368	4, 761	5, 165	4, 510	5, 624	4, 634	5, 320	5, 511
Plasterers	6, 468	6, 068	6, 049	5, 978	6, 122	5, 487	6, 011	6, 534
Operatives & kindred	5, 216	5, 089	5, 142	4, 404	5, 078	4, 825	5, 270	5, 339
Attendants, auto	2, 750	2, 869	2, 520	2, 802	2, 730	2, 573	3, 003	2, 589
Meatcutters	6, 051	6, 104	5, 739	5, 804	5, 747	5, 871	6, 096	6, 419
Truck drivers	5, 390	5, 550	4, 650	4, 941	5, 391	4, 987	5, 848	5, 939
Welders	5, 991	5, 431	5, 879	5, 094	5, 777	5, 322	5, 832	5, 829
N.E.C. manufacturing	5, 237	5, 068	5, 595	4, 306	5, 165	4, 836	5, 320	5, 198
Durable	5, 305	5, 018	4, 631	4, 195	5, 500	4, 901	5, 113	5, 413
Nondurable	4, 863	5, 169	5, 922	4, 399	4, 784	4, 502	5, 518	4, 674
Service workers	4, 042	3, 977	3, 909	3, 594	4, 076	3, 605	4, 193	3, 873
Barbers	4, 757	4, 315	4, 244	4, 149	4, 932	3, 873	4, 501	4, 535
Cooks	3, 777	4, 234	3, 619	3, 737	3, 942	3, 847	4, 321	4, 533
Guards	5, 390	4, 416	4, 073	3, 357	5, 094	4, 591	4, 481	4, 258
Waiters	4, 266	3, 637	3, 870	3, 489	3, 631	3, 368	4, 090	2, 448
Farm laborers and foremen	1, 621	1, 964	2, 281	1, 960	1, 815	1, 785	1, 999	2, 274
Laborers, except farm and mine	3, 753	3, 684	3, 462	2, 924	3, 965	3, 407	4, 473	3, 760
Manufacturing	4, 413	3, 929	4, 446	3, 109	3, 765	4, 018	4, 292	3, 817
Durable	4, 457	3, 852	4, 346	3, 007	4, 021	4, 140	4, 295	4, 603
Nonmanufacturing	3, 761	3, 402	3, 473	2, 883	3, 841	3, 206	4, 066	3, 988
Construction	4, 370	4, 309	4, 233	3, 944	4, 422	3, 906	4, 313	4, 526
All female workers	2, 729	2, 957	2, 154	2, 038	3, 042	2, 307	3, 165	2, 635
Clerical	3, 304	3, 484	3, 221	2, 927	3, 512	3, 142	3, 577	3, 226
Bookkeepers	3, 318	3, 653	3, 219	3, 016	3, 512	3, 112	3, 638	3, 138
Cashiers	2, 410	2, 937	2, 635	2, 248	2, 491	2, 557	3, 004	2, 408
Office machine operators	3, 606	3, 612	3, 548	3, 154	3, 526	3, 509	3, 634	3, 384
Secretaries	3, 525	4, 034	3, 649	3, 161	3, 945	3, 338	3, 976	3, 574
Stenographers	3, 589	3, 799	3, 713	3, 648	3, 814	3, 388	3, 885	3, 498
Telephone operators	3, 285	3, 363	3, 369	3, 351	3, 465	3, 147	3, 659	3, 325
Typists	3, 081	3, 091	2, 887	2, 814	3, 356	2, 993	3, 244	2, 683
All other	3, 277	3, 287	3, 049	2, 628	3, 420	3, 061	3, 456	3, 093
Salesworkers	1, 859	2, 021	1, 494	1, 666	1, 936	1, 773	2, 426	1, 805
Retail trade	1, 892	1, 935	1, 494	1, 693	1, 831	1, 783	2, 365	1, 842
Operatives	2, 866	2, 676	1, 733	1, 529	1, 976	1, 872	2, 696	1, 947
Laundry	2, 226	2, 196	2, 123	2, 273	2, 199	1, 988	2, 467	2, 600
Private household	724	886	672	654	643	659	842	691
Live out	667	807	665	635	623	641	780	647
Service	1, 698	1, 969	1, 589	1, 594	1, 871	1, 545	2, 191	1, 843
Institute attendants	2, 369	2, 440	2, 448	2, 309	2, 390	2, 185	3, 043	2, 492
Cooks	2, 163	2, 203	1, 773	1, 690	2, 020	1, 901	2, 348	2, 231
Waitresses	1, 464	1, 638	1, 329	1, 312	1, 472	1, 354	1, 802	1, 565

Source: U.S. Bureau of the Census, *Census of Population, 1960.*

SUMMARY

The "Commuter" Problem and Low Wages and Unemployment in American Cities on the Mexican Border

- About 44,000 alien commuters live in Mexico and work in U.S. cities.
- Another 18,000 U.S. citizens commute to their U.S. jobs from residence in Mexico.
- 90 percent of the commuters are in eight border areas: Brownsville, Laredo, Eagle Pass, and El Paso, Tex.; Nogales and San Luis, Ariz.; Calexico and San Ysidro, Calif.
- Unemployment in Texas border cities is almost 95 percent greater than in Texas interior cities.
- Alien commuters work most often in the lowest skilled, most menial, and lowest paid jobs: seasonal farmwork, maids, kitchen helpers, salesclerks, sewing machine operators.
- Wages for seasonal farmwork in Texas border areas are over 30 percent less than in the rest of the State.
- Firms that employ alien commuters tend to pay lower wages than firms that employ only U.S. residents.
- Firms that employ alien commuters frequently pay them less than what they pay U.S. residents for the same work.
- Wage rates paid to commuters are often less than what unemployed U.S. residents say they are willing to accept.
- Greatest number of alien commuters in Arizona cross the border at San Luis for farmwork in the Yuma area. Farm wages, however, in this area are high because the great number of alien commuters is a relatively new phenomenon resulting from efforts to attract a new labor supply after Public Law 78 terminated.
- Wage rates for nonfarmwork in Arizona border areas are very low in comparison to rates in other areas. Workers in Santa Cruz County, where most nonfarm alien commuters work, have the lowest earnings in the State, except for Apache County where poverty on the Navajo Indian Reservation depresses earnings.
- California farm wage rates are lowest in the border areas. The bulk of the farmwork force in these areas is composed of alien commuters.
- Alien commuters loom the largest in the Imperial Valley where they constitute about 30 percent of the total work force, and about 85 percent of the farmwork force. Unemployment in this area was 10 percent of the labor force in 1966, twice the average rate for the entire State.
- In San Diego, another area where large numbers of alien commuters work, wage rates were lower, and unemployment higher, than in Los Angeles.

XI.—THE LABOR CERTIFICATION

Its Requirements, Its Procedures, and Its Results in the First Year of Operation

Prepared for the

Select Commission on Western Hemisphere Immigration

by

The United States Department of Labor

THE LABOR CERTIFICATION

Its Requirements, Its Procedures, and Its Results in the First Year of Operation

Immigration responsibilities

Under the 1965 Immigration Act, as amended, the Secretary of Labor has the following responsibilities:

1. Under Section 212(a)(14), on requests from prospective immigrant workers or employers to determine and certify to the Secretary of State and the Attorney General, prior to issuance of an immigrant (permanent) visa by the Department of State, that,
   - (a) there are not sufficient workers in the United States who are able, willing, qualified, and available . . .;
   - (b) the employment of such aliens will not adversely affect the wages and working conditions of United States workers similarly employed.
2. Under section 204(b), upon request, advise the Attorney General on the qualifications of immigrant (permanent) workers with respect to according a status of third and sixth preference.

A system of preferences for immigrants from countries outside the Western Hemisphere was established by the 1965 Act. Under Section 203(a), preferences 1, 2, 4, and 5 are reserved for aliens with close family relationships to U.S. citizens or permanent resident aliens. Preference 7 pertains to refugees. Even though aliens qualifying for these preferences may seek work after settling in this country, the Labor Department has no responsibility in their admission.

The Labor Department's certification is required for *four* categories of admission whereby aliens seek to enter the United States on the basis of permanent employment.

A labor certification is needed by *third* preference, *sixth* preference, and *non*-preference immigrants from countries outside the Western Hemisphere; and by "Special Immigrants" from Western Hemisphere countries.

> *Third preference.*—Section 203(a)(3): Members of the professions, or scientists and artists of exceptional ability who will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States. (Cannot exceed 10 percent of total numerical limitation.)
>
> *Sixth preference.*—Section 203(a)(6): Skilled and unskilled immigrant workers in occupations for which a shortage of employable and willing persons exists in the United States. (Cannot exceed 10 percent of total numerical limitation.)
>
> *Special immigrants.*—Section 101(a)(27)(A): Immigrants born in any independent country of the Western Hemisphere or the Canal Zone. (No limitation until July 1, 1968; thereafter 120,000 per annum, unless changed by interim legislation.)

Within the Department of Labor, the Secretary delegated responsibility for administering the immigration activity to the Bureau of Employment Security. The 11 BES regional offices and over 2,000 local public employment service offices provide an administrative framework for carrying out the Department's immigration responsibilities. Also, the employment service functions of job placement, industrial service, occupational analysis, and labor area information provide the information necessary for making determinations on availability of U.S. workers and adverse effect and for advising the Department of Justice about an alien's job qualifications.

Implementation

The tests of *availability* and *adverse effect* for a later certification are based on information from various sources. Availability of American workers is determined from occupational information, and general and local employment data available in the Department of Labor, local public employment service offices, professional societies, trade associations, labor unions, and employer recruitment efforts. In determining adverse effect, factors such as hours, fringe benefits, and other employment conditions are considered. However, the primary consideration is the employer's wage offer.

Advisory opinions regarding an alien's job qualifications which are made to the Department of Justice, upon request, under section 204(b), are based on an analysis of an alien's work experience, education, and training. In the professional occupations the alien's formal education, as related to U.S. professional standards, is most important.

Forms

The basic forms for applying for a labor certification are forms ES–575, "Application for Alien Employment Certification."

—Part A of form ES–575, "Statement of Qualifications of Alien," details the alien's identifying and personal data, education and training, special qualifications and skills, and work experience;

—Part B of form ES–575, "Job Offer for Alien Employment," provides for information on the terms of the offer and job requirements;

—A supplemental job offer statement (ES–575B, Supplement 1) is required for live-in occupations.

The certification procedure is put into motion by the alien, or by an employer or interested person.

Labor certifications are made either through the use of Schedules (lists of occupations) or by individual case review. These methods are responsive to economic and manpower changes and expedite the processing of cases.

Schedules

All lists of occupations are published as Regulations of the Department of Labor in the "Federal Register." Schedules A, B, and C consists of occupations and occupational groups which because of the existence of certain patterns in labor supply and demand in the economy can be processed expeditiously. All three Schedules are applied uniformly to requests for certification from all countries.

> *Schedule A.—The Certification List:* Consists of professional occupations and fields of specialty in short supply nationally which are certified in advance; for example, physicians, engineers, mathematicians, chemists, and physicists. Also, Schedule A specifies precertification for applications for aliens with an advance degree comparable to a Ph. D. or master's degree given in American colleges or universities and for aliens coming to the United States to perform duties required of them as members of bona fide religious organizations, provided that such duties are related to the nonprofit operations of such organizations. Consular or immigration officials take final action on cases involving these occupations. No job offer or individual review by the Department of Labor is required.
>
> *Schedule B.—The Noncertification List:* Consists of low skill occupations and occupational groups requiring minimum training periods and with a supply of U.S. workers for which the Labor Department could not now, if requested, issue a certification. Examples are bus boys, hotel clerks, cook's helpers, farm laborers, grocery checkers, kitchen workers, and janitors.
>
> *Schedule C.*—Consists of a variety of occupations, including professional occupations not on Schedule A, semiprofessional, and skilled, which are generally in short supply in certain areas of the country; for example, chefs, accounting clerks, arc welders, practical nurses, office machine servicemen, draftsmen, machinists, psychiatric aides, and stenographers. No job offer is required and consular or immigration officer will send the form ES–575A directly to the national office for final action, when it appears that an intending immigrant qualifies for a schedule C occupation. A review is made by the BES national office to determine the availability of American workers in the occupation and geographic area of intended employment.

All Schedules are published in the "Federal Register" and their occupational content is continually analyzed in terms of changing job market, economic and labor supply and demand conditions. This makes the lists responsive to fluctuations in employment levels.

Individual Case Review

Aliens not qualified for an occupation on Schedules A or C must locate a willing U.S. employer and have him file the forms ES–575 with the local office of the State employment service. The local office performs the initial fact-finding and documentation on the availability of U.S. workers and prevailing wages in the area. Such action may include as many of the following as appropriate: File search of applicants registered in the local office; advertising; contacts with union and professional organizations; review of reports of employer layoff plans; completion dates of State and federal training programs; and contacts with other established recruiting sources.

The application forms and documentation are forwarded to a BES regional office. When the regional office has sufficient information on the availability of U.S. workers, prevailing wages, and working conditions, it issues a final determination. As appropriate, the employer, consular office, or Immigration Service office are notified of the decision.

Review and Reconsideration

Requests for review or reconsideration of disapprovals are made by writing to the Secretary of Labor in Wahington, D.C.; employers or interested parties may request a change in the occupational content of the Schedules or modification in the application of the Schedules because of geographical considerations. Aliens, or their intending employers, denied certification, may request a review of their cases. All requests must be based on new or clarifying information.

Cases Exempt from Labor Certification

No action is required from the Labor Department for the following types of aliens:

1. Cuban refugees paroled into the United States by the Attorney General;
2. Persons seeking admission to engage in employment related to religion;
3. An alien who establishes to the satisfaction of the consular officer that he does not intend to seek employment in the United States;
4. A spouse or child accompanying or following to join an alien spouse or parent who either has a labor certification or is a nondependent alien who does not require such a certification;
5. A woman applicant who intends to marry a U.S. citizen or alien resident and who does not intend to seek employment;
6. A person who is seeking to enter the United States for the purpose of engaging in a commercial or agricultural enterprise in which he has invested;
7. A member of the Armed Forces;
8. A person coming to the United States solely for the purpose of study.

Reporting

—A *certification* is an approval of a case.

—A *case* involves a job offer in a specific occupation or an evaluation of an alien's occupational qualifications for which a certification request has been made. A case can involve one or more job openings.

—A *job opening* is a vacant position in a specific occupation for which alien employment is planned.

In 1966, the Department of Labor made 69,628 case determinations representing 89,060 job openings. Of these, 58,253 cases representing 74,814 job openings were certified. Thus, 83.7 percent of the cases and 84 percent of the openings were certified.

Certification activity was initially slow but gained momentum rapidly as Labor Department procedures were streamlined. In the first quarter of calendar year 1966 (January–March), 4,660 case certifications, representing 6,420 openings for potential foreign workers seeking admission, were issued. In the last quarter (October–December), 21,249 cases, representing 26,635 openings, were certified. Thus, decentralization and modification of fact-finding requirements greatly increased the issuance of labor certifications.

In the last half of 1966 (July–December), 40,893 permanent case certifications were issued (approvals only). Of these permanent case certifications, 40.4 percent were in live-in service occupations, 24.3 percent were in professional, technical and managerial occupations, and 12.2 percent in the machine trades occupations. (See table II for major occupational distribution.)

Engineers, accountants, architects, nurses and teachers predominated in the professions, while tool and dye makers and machinists led in the machine trades occupations.

Requests for certification of aliens for permanent employment have been received from every State, the District of Columbia, and all U.S. Territories. An analysis of openings certified for permanent alien employment between July 1, 1966, and December 31, 1966, indicates that over one-half were in the eastern coastal area of New York, New Jersey, Massachusetts, Connecticut, Pennsylvania, Maryland, and the District of Columbia and Rhode Island.

The States with the largest percent of openings certified for permanent alien employment from July through December were New York (25.5), California (14.2), Michigan (5.3), New Jersey (7.2), Massachusetts (7.5), and Illinois (5.5). (See table III for distribution for 24 selected States.)

New York led the number of certified openings in every occupational category except the machine trades, where they were a close second. Michigan ranked first in the machine trades occupations, second in clerical and sales, and structural work occupations, and third in professional and technical occupations. California accounted for the second largest number of certified permanent openings in the professional and technical, and service occupations, and ranked third in machine trades and structural work.

Almost one-half (45.4 percent) of the aliens seeking admission on the basis of the labor certification issued between July and December 1966 were born in Europe. Job openings for aliens born in North America were approved for 30 percent of the certifications. Asia followed with 11.6 percent and South America with 5.8 percent.

Attachments

Division of Immigration Services,
Bureau of Employment Security,
U.S. Department of Labor,
April 6, 1967.

TABLE I.—*1966 permanent Department of Labor case and openings determinations by quarters* [1]

Quarter	Total determinations [2]		Certifications [3]	
	Cases	Openings	Cases	Openings
January–March	6, 435	8, 382	4, 660	6, 420
April–June	15, 064	20, 175	12, 700	17, 109
July–September	25, 211	29, 251	19, 644	24, 650
October–December	24, 918	31, 252	21, 249	26, 635
Totals	69, 628	89, 060	58, 253	74, 814

[1] Does not include State and INS activity.
[2] Includes approvals and disapprovals.
[3] Approvals only.

Table II.—*Number and percent permanent case and openings certifications by major occupational categories for July 1, 1966, through December 31, 1966* [1]

Occupational category	Cases [2]		Openings [3]	
	Number	Percent	Number	Percent
Professional, Technical & Managerial	9,943	24.3	13,071	25.5
Clerical & Sales	1,410	3.5	1,719	3.4
Service:				
Live-in	16,504	40.4	16,575	32.3
Other	2,043	5.0	2,010	3.9
Farm, Fishing, Forestry & Related	118	.3	116	.2
Processing	752	1.8	1,061	2.1
Machine Trades	4,947	12.1	9,330	18.2
Bench Work	2,998	7.3	3,808	7.4
Structural Work	1,845	4.5	3,216	6.3
Miscellaneous	333	.8	379	.7
Totals	40,893	100.0	51,285	100.0

[1] Does not include State and INS activity.
[2] Represents request from an employer or alien in one occupation.
[3] Represents vacant positions for which alien employment is planned. Number of potential alien workers seeking admissions on basis of labor certification.

Table III.—*Number and percent of permanent certified openings by selected States, July–December 1966* [1]

State	Number	Percent
New York	11,779	25.5
California	6,544	14.3
Massachusetts	3,480	7.5
New Jersey	3,304	7.2
Illinois	2,516	5.5
Michigan	2,423	5.3
Connecticut	2,046	4.4
Pennsylvania	1,962	4.3
Florida	1,214	2.6
Maryland	1,063	2.3
Ohio	1,051	2.3
Washington	1,009	2.2
District of Columbia	834	1.8
Texas	823	1.8
Georgia	789	1.7
Indiana	514	1.1
Phode Island	419	.9
Virgin Islands	412	.9
Virginia	391	.8
Minnesota	343	.7
Louisiana	333	.7
Puerto Rico	284	.6
Wisconsin	276	.6
Missouri	248	.5
Subtotal	44,057	95.5
U.S. total	46,139	100.0

[1] Represents 90 percent of permanent certified openings for the period.

Table IV.—*Number and percent of certifications for permanent alien's region of birth, July–December 1966* [1]

Region	Number	Percent
Europe	15,685	45.4
North America	10,354	30.0
Asia	3,992	11.6
South America	2,008	5.8
Other Western	1,608	4.7
Other Non-Western	451	1.3
Africa	247	.7
Oceania	185	.5
Total	34,530	100.0

[1] Represents about 85 percent of the permanent approved cases for the period.

Table V.—*Number and percent of certifications for permanent employment by sex and age of aliens, July 1, 1966–December 31, 1966* [1]

Age	Males		Females	
	Number	Percent	Number	Percent
Under 45	14,503	87.1	16,755	86.8
45–65	2,119	12.8	2,486	12.9
Over 65	21	.1	56	.3
Total	16,643	100.0	19,297	100.0

[1] Represents 88 percent of permanent approved cases for the period.

Source: Branch of Immigration Analysis, Bureau of Employment Security.

United States Department of Labor

XII.—Certification of Immigrants Approved for Permanent Employment by Occupation, Region, and Country of Birth,[1] Fiscal Year 1967

Region and country of birth	Total	Professional, technical, and managerial	Clerical and sales	Service	Farming, fishing, and forestry	Processing	Machine trade	Bench work, etc.	Structural work	Miscellaneous
Western Hemisphere	34, 440	6, 666	1, 425	20, 388	100	420	2, 337	1, 070	1, 613	421
North America	29, 449	5, 552	1, 249	17, 624	87	392	1, 904	808	1, 451	382
Jamaica	9, 180	1, 013	189	7, 543	11	37	167	104	79	37
Canada	6, 438	2, 865	650	521	26	201	1, 053	182	743	197
Trinidad and Tobago	4, 771	529	124	3, 372	15	17	136	93	410	75
Mexico	3, 242	223	42	2, 275	29	88	234	211	101	39
Haiti	1, 430	260	34	962	1	12	72	67	17	5
Cuba	1, 110	411	144	325	2	30	68	76	46	8
All other countries	3, 278	251	66	2, 626	3	7	174	75	55	21
South America	4, 991	1, 114	176	2, 764	13	28	433	262	162	39
Colombia	1, 380	243	45	796	3	7	129	47	46	14
Argentina	928	410	32	255	1	6	109	63	43	9
Peru	808	107	24	613	2	2	17	27	12	4
Brazil	572	123	17	249	1	7	87	70	15	3
Chile	286	94	14	141	1	-----	14	13	6	3
All other countries	1, 067	137	44	710	5	6	77	42	40	6

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[1] Included estimate of certification processed by State Department and INS on the basis of Schedule A.

United States Department of Labor

XIII.—Occupations of Western Hemisphere Immigrants and Percentage Reporting an Occupation, Calendar Years 1961–66

Occupations of Western Hemisphere immigrants, 1961–1966

(*Selected countries and occupations*)

	1966	1965	1964	1963	1962	1961
PROFESSIONAL WORKERS						
Total North and South America	11, 160	13, 012	12, 460	10, 806	10, 189	8, 500
Canada	3, 703	4, 629	4, 376	4, 047	3, 532	3, 541
Mexico	593	569	442	627	700	542
Cuba	2, 134	2, 406	2, 250	1, 419	2, 483	1, 511
Dominican Republic	463	303	251	454	353	NA
Argentina	628	873	1, 045	719	455	477
Colombia	723	799	924	631	455	355
Haiti	353	497	306	302	223	NA
Jamaica	346	176	252	255	140	NA
CRAFTSMEN						
Total North and South America	6, 438	7, 672	6, 849	7, 004	6, 043	5, 508
Canada	1, 415	2, 320	2, 184	2, 036	1, 639	1, 842
Mexico	883	673	551	1, 433	1, 706	1, 488
Cuba	618	726	561	438	604	465
Dominican Republic	839	627	362	577	211	NA
Haiti	250	351	142	164	98	NA
Jamaica	212	168	168	166	143	NA
Argentina	432	644	782	480	222	289
Colombia	470	494	497	267	189	150
FARM AND NONFARM LABORERS						
Total North and South America	6, 622	6, 793	7, 694	19, 423	21, 422	13, 639
Canada	1, 144	2, 012	1, 752	1, 952	1, 715	1, 566
Mexico	3, 908	3, 313	4, 693	16, 172	18, 703	11, 266
Cuba	275	320	299	218	199	138
Dominican Republic	593	290	177	323	82	NA
Jamaica	141	92	84	85	61	NA
PRIVATE HOUSEHOLD WORKERS						
Total North and South America	7, 802	7, 179	5, 725	6, 561	6, 423	5, 519
Mexico	2, 434	2, 418	1, 791	2, 885	3, 916	3, 291
Dominican Republic	2, 473	1, 368	999	1, 214	367	NA
El Salvador	276	190	161	130	120	NA
Guatemala	213	171	199	116	70	NA
Colombia	467	532	440	258	217	193
Costa Rica	125	455	340	292	186	NA

Source: U.S. Department of Labor.

Percentage of Western Hemisphere immigrants reporting an occupation, 1961–66. [*Selected countries.*]

	1966	1965	1964	1963	1962	1961
All immigrants	35. 5	39. 9	41. 5	45. 2	48. 5	45. 3
North America	35. 2	39. 8	41. 4	45. 5	49. 3	46. 0
South America	37. 1	40. 4	41. 9	43. 6	42. 6	40. 3
Canada	41. 9	46. 4	45. 6	45. 3	45. 8	44. 9
Mexico	21. 5	22. 4	26. 3	42. 8	50. 8	47. 6
Cuba	41. 0	42. 4	46. 9	50. 3	49. 5	39. 7
Dominican Republic	42. 2	51. 3	53. 4	47. 1	50. 1	NA
Haiti	44. 3	54. 1	52. 5	56. 9	58. 7	NA
Jamaica	52. 3	48. 0	53. 2	53. 6	51. 1	NA
Costa Rica	36. 9	52. 9	52. 3	54. 9	54. 7	NA
Guatemala	52. 7	49. 5	54. 7	52. 7	50. 3	NA
Honduras	44. 4	54. 4	55. 5	50. 2	50. 1	NA
Panama	31. 2	42. 8	40. 7	44. 0	44. 9	NA
Argentina	45. 5	45. 8	47. 2	46. 2	44. 5	40. 2
Brazil	40. 5	44. 8	45. 9	40. 8	39. 6	39. 0
Colombia	32. 2	34. 4	38. 2	46. 2	46. 7	45. 0
Ecuador	36. 1	43. 6	41. 5	44. 0	47. 0	40. 4

Source: U.S. Department of Labor.

United States Department of Labor

XIV.—Labor Certification Schedules A, B, and C.

SCHEDULE A.—*Rules and Regulations*

FEDERAL REGISTER
Vol. 31, No. 248, page 16412
December 23, 1966

Title 29.—LABOR

Subtitle A.—Office of the Secretary of Labor

PART 60.—IMMIGRATION: AVAILABILITY OF, AND ADVERSE EFFECT UPON, AMERICAN WORKERS

§ 60.2 Certification and noncertification schedules

(a) DETERMINATION.—To reduce the delay in processing an alien's request for visa, the determination has been made by the Secretary of Labor pursuant to section 212(a)(14) that:

(1) For the categories of employment described in Schedule A and in the geographic areas therein set forth, there are not sufficient workers who are able, willing, qualified and available for employment in such categories, and the employment of aliens in such categories and in such areas will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The schedules at the end of 29 CFR Part 60 are revised to read as follows:

SCHEDULE A

Group I: Persons who received an advance degree in a particular field of study from an institution of higher learning accredited in the country where the degree was obtained (comparable to a Ph. D. or master's degree given in American colleges or universities).

Group II: Persons who have received a degree conferred by an accredited institution of higher learning in any of the following specialties or have experience or a combination of experience and education equivalent to such a degree:

Accounting and Auditing [1]
Aeronautical Engineering
Architecture [1]
Chemical Engineering
Chemistry [1]
Civil Engineering [1]
Dietetics [1]
Electrical Engineering
Electronic Engineering
Industrial Engineering [1]
Mathematics
Mechanical Engineering
Metallurgy and Metallurgical Engineering
Nuclear Engineering
Nursing
Pharmacy
Physical Therapy [1]
Physics

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[1] Occupation added Dec. 23, 1966.

Group III: (a) Any person of any religious denomination whose regular profession or occupation is to conduct religious services, which he is authorized by his denomination to perform, and who is seeking admission to the United States in order to engage principally in such work.

(b) Any person of any religious denomination having a religious commitment, such as a Monk, Nun, Brother, Missionary and others, who is seeking admission to the United States to perform the duties required of him by virtue of such commitment.

(c) Any other person seeking admission to the United States to perform duties related to the nonprofit operation of a religious organization (1) if the duties which he will perform involve special skills, training and experience which the alien possesses and which are related to the religious objectives of the organization and (2) if he intends to be engaged principally (more than 50 percent of his working time) in such duties. Examples of persons coming within this subgroup are cantors and translators of religious tracts or texts who have the special capability of conveying through the translation the spiritual message to which such tracts or texts are directed and who will be engaged in such endeavors.

An operation may be considered nonprofit for purposes of Group III if the receipts from the operation will be used exclusively in furtherance of the philanthropic or religious purposes of the organization.

SCHEDULE B.—*Rules and Regulations*

Federal Register
Vol. 31, No. 248, page 16413
Friday, December 23, 1966

TITLE 29.—LABOR

Subtitle A.—Office of the Secretary of Labor

PART 60.—IMMIGRATION: AVAILABILITY OF, AND ADVERSE EFFECT UPON, AMERICAN WORKERS

§ 60.2 Certification and noncertification schedules

(a) Determination.—To reduce the delay in processing an alien's request for visa, the determination has been made by the Secretary of Labor pursuant to section 212(a)(14) that:

(2) For the categories of employment described in Schedule B, the determination and certification required by section 212(a)(14) cannot now be made:

Schedule B

Bakers' Helpers
Bartenders
Bookkeepers II
Bus Boys
Carpenters' Helpers
Charwomen and Cleaners
Clerks, Hotel
Clerks and Checkers,
  Grocery Store
Cook's Helpers
Domestic Day Workers
Electric Truck Operators
Elevator Operators
Fishermen and Oystermen
Floor Man, Floor Boy and
  Floor Girl
Groundskeepers
Housemen and Yardmen
Janitors
Kitchen Workers and Helpers
Laborers, Farm
Laborers, Mine
Laborers, Common
Library Assistants
Loopers and Toppers, Textile
Maids, Hotel
Material Handlers
Packers, Markers, Bottlers,
  and related
Painters' Helpers
Routemen Helpers
Sailors and Deck Hands
Sewing Machine Operators and
  Hand-Stitchers
Street Railway and
  Bus Conductors
Truck Driver's Helpers
Ushers, Recreation
  and Amusement
Warehousemen
Welder's Helpers

Additional Information

OCCUPATIONAL TITLES (16) DELETED FROM SCHEDULE B, DECEMBER 23, 1966

- Attendants, Parking Lot
- Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)
- Automobile Service Station Attendants
- Cashiers II
- Chauffeurs and Taxicab Drivers
- Clerks (general office)
- Counter and Fountain Workers
- Guards and Watchmen
- Housekeepers
- Launderers, Cleaners, Dyers, and Pressers
- Porters
- Sales Clerk, General
- Telephone Operators
- Truck Drivers and Tractor Drivers
- Typists, lesser skilled
- Waiters and Waitresses

SCHEDULE C.—*Rules and Regulations*

FEDERAL REGISTER
Vol. 32, No. 16, page 867
January 25, 1967

Title 29.—LABOR

Subtitle A.—Office of the Secretary of Labor

PART 60.—IMMIGRATION: AVAILABILITY OF, AND ADVERSE EFFECT UPON, AMERICAN WORKERS

§ 60.3 Request for certification not covered by § 60.2

(a) Any alien, or person in his behalf, seeking admission to the United States under sections 101(a)(27)(A) (other than the parent, spouse, or child of a U.S. citizen or alien lawfully admitted to the United States for permanent residence), 203(a)(6), or 203(a)(8) . . .

(b) Any alien seeking admission to the United States otherwise subject to the provisions of paragraph (a) of this section whose category of employment is described in Schedule C may request a 212(a)(14) certification by filing a Form ES–575–A describing his qualifications and may omit filing a Form ES–575–B describing his prospective employment in the United States. Instructions for filing in these circumstances are available from U.S. Consular offices abroad and Embassies and Immigration and Naturalization Service offices. Such instructions will where appropriate require aliens to indicate where they will reside. When the Consular offices abroad or the Immigration and Naturalization Service send the ES–575–A's to the Department of Labor, all sources of labor in the area of residence will be reviewed and certification will be issued depending on the circumstances at that time. If the local review shows workers are available, or that wages or working conditions will be adversely affected, the certification will not be issued. Applications should not be sent directly to the U.S. Department of Labor by the alien.

(c) Schedule C is a list of occupations which have been found to be in short supply generally, although not nationwide as in Schedule A. Schedule C is reviewed continuously to be sure that the list will be kept current. If information shows adverse effects are occurring from the use of immigrant workers, or if an adequate supply of qualified workers becomes available, the occupation will be removed from Schedule C promptly.

A new Schedule C is added to the end of Part 60 to read as follows:

SCHEDULE C

GROUP I

Accounting Clerks
Aircraft-Assemblers-Installers, General
Airplane Inspectors
Airplane Mechanics
Airplane Pilots, Commercial
Arc Welders
Assemblers, Subassemblies, Aircraft
Assembly Mechanics, Experimental Aircraft
Automobile-Body Repairmen
Automobile Mechanics
Automobile Upholsterers

Bakers
Boring-Machine Operators
Boring-Machine Set-Up Operators, Jig
Boring-Mill Set-Up Operators, Horizontal
Cabinetmakers
Chassis Assemblers
Chefs
Clothes Designers
Combination Welders
Compositors
Coppersmiths, Ship
Cylindrical-Grinder Operators
Dental-Laboratory Technicians
Draftsmen
Drop-Hammer Operators
Electrical-Appliance Servicemen
Electrical-Instrument Repairmen
Electrical Repairmen
Electricians, Airplane
Electric-Motor Repairmen
Electrocardiograph Technicians
Electroencephalograph Technicians
Electronics Mechanics
Form Builders, Aircraft
Gamma-Facilities Operators
Household-Applicance Repairmen
Inspectors, Floor
Instrument Men, Aircraft
Interior Decorators
Jewelers
Key-Punch Operators
Linemen
Loftsmen, Ship
Machinists
Maintenance Mechanics
Maintenance Men, Factory or Mill
Medical Technologists
Milling-Machine Operators
Millwrights
Nurses, Practical
Office-Machine Servicemen
Orthoptists
Patternmakers, Plaster, Aircraft
Pipefitters, Ship
Production Planners
Psychiatric Aides
Radio-Repairmen
Screw-Machine Operators, Production
Secretaries
Sheet-Metal Workers
Shipfitters
Shoe Repairmen
Skilled Garment Occupations, Master Tailors and Dressmakers
Specialty Cooks
Stenographers
Stonecutters, Hand
Structural-Steel Workers
Surgical Technicians
Systems Engineers (Data-Processing).
Technicians, Engineering and Physical Sciences
Television Service-and-Repairmen
Template Makers, Aircraft
Test-Reactor Operators
Tool-and-Die Makers
Tool-Grinder Operators
Tool Planners
Turret-Lathe Operators
Watchmakers
Wheel-Alinement Mechanics

GROUP II

Any person qualified as a professional or who has exceptional ability in the sciences or arts and whose occupation is not listed on Schedule A. (Certification requires full documentation as defined in instructions for completion of the Form 575–A.)

XV.—EXEMPTIONS FROM LABOR CERTIFICATION BASED UPON RELATIONSHIP

Prepared for the

Select Commission on Western Hemisphere Immigration

by

The Immigration and Naturalization Service
United States Department of Justice

EXEMPTIONS FROM LABOR CERTIFICATION BASED UPON RELATIONSHIP

Section 202(a) of the Immigration and Nationality Act, as amended by the Act of October 3, 1965, provides as follows:

> "No person shall receive any preference or priority *or be discriminated against in the issuance of an immigrant visa* because of his race, sex, nationality, *place of birth*, or place of residence except as specifically provided in section 101(a)(27), section 201(b) and section 203: . . ."

Despite the foregoing provision of the law, it may be said that the Immigration and Nationality Act as amended contains within itself in section 212(a)(14) provisions which discriminate against an alien in the issuance of an immigrant visa on the basis of his place of birth. For, if the alien was born in the Canal Zone or an independent country of the Western Hemisphere, he is ineligible for the issuance of an immigrant visa unless he meets the requirement of obtaining a Labor Department certification pursuant to section 212(a)(14) even if he or she is the brother, sister, adult married or unmarried son or daughter of a United States citizen, or the adult unmarried son or daughter of a lawful permanent resident. Yet, an alien born elsewhere who has those relationships to the citizen or lawful permanent resident of the United States may be accorded a first, second, fourth or fifth preference classification, and thus be exempted from the labor certification requirement. Since section 101(a)(27) of the Immigration and Nationality Act admittedly discriminates in favor of aliens born in independent countries of Western Hemisphere by classifying them as "special immigrants", exempt from the annual numerical limitation on the issuance of visas, there is no logical explanation of why the statute should discriminate against such aliens with respect to obtaining a labor certification as a prerequisite to the issuance of an immigrant visa.

On the other hand, and equally without a logical explanation, there are certain relationships where it is more advantageous for the immigrant to have been born in the Canal Zone or in an independent country of the Western Hemisphere, than elsewhere. For example, an immigrant born in the Canal Zone or independent country of the Western Hemisphere, who is the parent of a United States citizen (regardless of the citizen's age) or who is the parent of a lawful permanent resident, is exempt from the labor certification requirement. An immigrant born elsewhere, who is the parent of a United States citizen can be exempted from the certification requirement on the basis of that relationship only if the United States citizen offspring is 21 years of age or older, and derives no exemption from being the parent of a lawful permanent resident alien. Attachment A is a chart which depicts the differences with regard to exemptions from the labor certification requirement based on relationship, depending on whether or not the immigrant was born in the Canal Zone or an independent country of the Western Hemisphere (section 101(a)(27)(A)), or whether the immigrant was born elsewhere.

Also attached for ready reference, as Attachment B, are copies of section 212(a)(14), 101(a)(27)(A), 101(b) (1) and (2) and section 203(a) of the Immigration and Nationality Act, as amended.

Present exemptions from sec. 212(a)(14): Certification Requirement Based on Relationship—Immigration and Nationality Act, as amended by Act of Oct. 3, 1965

Relationship of immigrant	Immigrant described in sec. 101(a)(27)(A)	Other immigrants
Parent of adult U.S.c[1]	Exempt	Exempt.
Parent of minor U.S.c	do	Not exempt.
Spouse of U.S.c	do	Exempt.
Child [2] of U.S.c	do	Do.
Married or unmarried son or daughter [3] of U.S.c	Not exempt	Do.[4]
Brother or sister of U.S.c	do	Do.[4]
Parent of LPR [1] alien	Exempt	Not exempt.
Spouse of LPR	do	Exempt.
Child [2] of LPR	do	Do.
Unmarried son or daughter [3] of LPR	Not exempt	Do.[5]

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[1] LPR means lawful permanent resident alien; U.S.c. means U.S. citizen.

[2] Child means unmarried minor child as defined in sec. 101(b)(1) of the Immigration and Nationality Act.

[3] Son or daughter means an adult offspring.

[4] Includes any accompanying or following to join spouse or child of immigrant.

[5] Includes any accompanying or following to join child of immigrant.

XVI.—EMPLOYMENT OF WESTERN HEMISPHERE NATIVES AS TEMPORARY WORKERS

Prepared for the

Select Commission on Western Hemisphere Immigration

by

The Immigration and Naturalization Service
United States Department of Justice

PROCEDURES UNDER WHICH ALIENS MAY BE ADMITTED TO THE UNITED STATES TEMPORARILY FOR EMPLOYMENT

Prior Legislation

The first general statutory restriction on the bringing of foreign labor into the United States was enacted in 1885 and was known as the alien contract labor law. The restriction was aimed at the practice of certain employers bringing cheap labor into this country from abroad. This practice had begun in 1869 when advertisements were printed and distributed abroad offering inducements to aliens to proceed to this country, particularly to the coal fields, for employment. Many advertisements asserted that several hundred men were needed in places where there were actually no labor shortages. The objective was to oversupply the labor market so that domestic laborers would be forced to work at reduced wages.

The alien contract labor law made it unlawful to bring aliens into the United States under contract to perform labor or services, with exceptions for certain skilled workmen, professional actors, artists, lecturers, singers, domestic servants, ministers of religion, persons belonging to any recognized professions, and professors for colleges and seminaries. The act of March 3, 1891, prohibited the bringing into the United States of alien laborers by promise of employment through advertisements in any foreign country. Any alien coming to the United States in consequence of such an advertisement was considered a contract laborer.

Subsequent legislation, the Acts of March 3, 1903, February 20, 1907, and February 5, 1917, continued the prohibition against bringing contract laborers into the United States. However, the 1917 Act in the Ninth Proviso to Section 3, provided that inadmissible aliens (including contract laborers) seeking temporary admission could be admitted under conditions prescribed by the Commissioner of Immigration and Naturalization. Also, the fourth proviso of that section permitted the importation of skilled labor if labor of like kind unemployed could not be found in this country.

During World War II, with agricultural and industrial production vital to winning the war, it became necessary to recruit workers from abroad to overcome manpower shortages. Acting under special legislation and the discretionary authority contained in the Ninth Proviso to Section 3 of the 1917 Act, the Service permitted agricultural and industrial laborers from Mexico and various countries in the West Indies to be brought to the United States for temporary employment. The special legislation referred to was contained in the Act of April 29, 1943, and the Act of February 14, 1944. The Act of April 29, 1943, permitted the entry of agricultural laborers born in Western Hemisphere countries and exempted such laborers from some of the usual requirements for admission to this country. The Act of February 14, 1944, allowed the employment of agricultural laborers in packing, canning, and other processing of perishable seasonal agricultural products. The special legislation expired on December 31, 1947. Thereafter, foreign laborers were permitted to be brought into the United States temporarily under the Ninth Proviso to Section 3 of the Act of February 5, 1917. On July 12, 1951, Public Law 78 was enacted by the 82d Congress to provide a special method of importing agricultural workers (braceros) from Mexico. The 1917 Act was repealed by the Immigration and Nationality Act, effective December 24, 1952. The "Bracero" program for Mexican agricultural workers expired on December 31, 1964.

THE MEXICAN "BRACERO" PROGRAM

(Mexican Temporary Agricultural Labor Program under the Agricultural Act of 1949, as Amended and Extended)

In 1943 during World War II with the lack of agricultural labor in the United States, the War Foods Administration in cooperation with the Department of Labor and the Immigration and Naturalization Service, established recruiting centers in the Republic of Mexico to supply emergency field labor in the United States by agreement between the Governments of the United States and Mexico signed the year before. Starting in 1951, the importation of Mexican agricultural workers was governed by the Agricultural Act of 1949, as amended on July 12, 1951, by Public Law 78, 82d Congress. This Act, as amended, authorized the U.S. Secretary of Labor to recruit Mexican workers ("braceros") to assist in the production of agricultural commodities and products specified by the Secretary of Agriculture. Originally the authority to import Mexican workers under this Act had an expiration date of December 31, 1953. That date was extended by successive amendments. The last amendment was enacted on December 13, 1963, as Public Law 88–203. It extended the authority to import Mexican workers under the Agricultural Act of 1949, as amended, until December 31, 1964.

The details of this recruitment program were originally set out in the Migrant Labor Agreement of 1951, executed by the United States and Mexican Governments. The law required that before Mexican farmworkers could be imported the Secretary of Labor had to determine and certify that:

1. Sufficient domestic workers, able, willing, and qualified, were not available at the time and place needed to perform the work for which such braceros were to be employed;
2. the employment of such workers would not adversely affect the wages and working conditions of domestic workers similarly employed; and
3. that reasonable efforts had been made to attract domestic workers for such employment at wages and conditions comparable to those offered to braceros.

Under the Migrant Labor Agreement with Mexico, the Secretary of Labor was given control over determining wage rates under which braceros would be employed.

Amendments contained in the act of October 3, 1961, provided stronger safeguards for domestic workers. Formerly, braceros could be made available after a certification by the Secretary of Labor that reasonable efforts had been made to attract domestic workers at comparable wages and standard working hours. As the law was then amended, domestic workers had to be offered the same wages, standard working hours, and conditions as those offered braceros.

In addition to the above changes the following new section was added by amendment of October 3, 1961:

Section 504

> No worker recruited under this Title shall be made available to any employer or permitted to remain in the employ of the employer—(1) for employment in other than temporary or seasonal occupation, except in specific cases when found by the Secretary of Labor necessary to avoid undue hardship; or (2) for employment to operate or maintain power-driven, self-propelled harvesting, planting, or cultivating machinery, except in specific cases when found by the Secretary of Labor necessary to avoid undue hardship.

This new section of the law caused concern to farmers who had been using such workers. The Department of Labor ruled that the nature of agricultural employment is such that employment for a period or periods aggregating more than half a calendar year must be presumed to be other than temporary or seasonal employment; therefore, braceros could not be employed by any one employer or association for more than 180 days during a calendar year. The requirement prohibiting employment of "braceros" as tractor drivers or packers also was opposed by U.S. contractors.

In 1953, there were only 178,000 braceros admitted to the United States. As a result of the exerted efforts of this Service to stop the illegal entrance of aliens from Mexico, the farmers were forced to turn to this program for required field labor. Since 1953 the importation of Mexican agricultural laborers ("braceros") increased noticeably, reaching a peak of some 450,000 in fiscal year 1957. After that year there was a decrease to somewhat less than 182,000 admitted to the United States during fiscal year 1964. Automation was a prime factor in this decrease.

The bracero was used in all types of work requiring field labor and employed in the agricultural states throughout the United States. California, Texas, and Arizona were the principal users of bracero labor.

Since the termination of the "bracero" program on December 31, 1964, the importation of Mexican temporary agricultural laborers has been accomplished in accordance with the provisions of section 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act, and implementing regulations in 8 CFR 214.2(h).

TEMPORARY ADMISSION OF FOREIGN WORKERS AND TRAINEES UNDER THE IMMIGRATION AND NATIONALITY ACT

Since December 24, 1952, the date on which the Immigration and Nationality Act became effective, the temporary admission of foreign workers and trainees has been governed by the provisions of section 101(a)(15)(H) and 214(c) of that Act, and implementing regulations. Section 101(a)(15)(H) sets forth the categories of aliens who may be admitted temporarily to perform services or receive training.

Section 214(c) requires the filing and approval of a petition by the Attorney General before the temporary admission of such aliens may be authorized.

The statute provides for two categories of temporary workers and one category of temporary trainees. One prerequisite equally applicable for workers and trainees is that they have a residence in a foreign country which they do not intend to abandon. The first category of temporary workers, known as H–1, is for aliens of distinguished merit and ability coming to the United States to perform temporary services of an exceptional nature requiring such merit and ability. The second category of temporary workers, known as H–2, is for aliens coming to the United States to perform other temporary services or labor if unemployed persons capable of performing such services or labor cannot be found in this country. The sole trainees category is for aliens coming to the United States as "industrial" trainees. The Service has construed the term "industrial" in a broad sense as permitting training in any field of endeavor including agriculture, commerce, communications, finance, government, transportation, and the professions as well as in a purely industrial establishment.

In accordance with section 214(c) of the Immigration and Nationality Act, the question of bringing any "H" alien to the United States is determined by the Commissioner of Immigration and Naturalization under authority delegated to him by the Attorney General. The Commissioner makes this determination upon consideration of the petition filed by the prospective employer or trainer after consultation with appropriate agencies of the Government. The Bureau of Employment Security, Department of Labor, is the agency consulted with respect to H–2 aliens.

All "H" aliens who must have visas to enter the United States are preliminarily examined by an American consul abroad as to admissibility before the visa is issued. Upon arrival of the alien at a port of entry in the United States, he is examined for admissibility by an officer of the Immigration and Naturalization Service. In cases where visas are not required to enter the United States, such as in the cases of Canadian nationals, and agricultural workers of French, British, or Netherlands nationality who reside in the adjacent islands of the Caribbean area, the alien is not examined by an American consul abroad but undergoes immigration inspection at the port of entry.

There have been no amendments of sections 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act.

Procedure

A prospective employer or trainer initiates action to bring an alien to this country by filing a petition in duplicate at the district office of this Service having jurisdiction over the area in the United States where the alien is to be employed or trained. The petitioning employer may include any number of aliens in his petition. Section 281 of the Immigration and Nationality Act provides that a fee of $10 be charged for the filing of the petition. The petition must be supported by documentary or other evidence to establish the alien's eligibility for the classification sought, H–1, H–2 or H–3.

H–1, persons of distinguished merit and ability

If a petition is filed to accord an alien an H–1 classification, a clear showing must be made that the alien is of distinguished merit and ability and that the services he is to perform require such merit and ability. To be considered a person of distinguished merit and ability, the alien must possess high education, technical training, specialized experience, or exceptional ability.

H–2, other temporary workers

If a petition is filed to accord an alien an H–2 classification, the petition must be accompanied by a certification from the Department of Labor stating that qualified persons in the United States are not available and that the employment of the alien beneficiaries will not adversely affect the wages and working conditions of workers in the United States similarly employed, or by a notice from that Department that such certification cannot be made.

H–3, trainees

If a petition is filed to accord an alien an H–3 classification as a trainee, the petitioner must submit a statement describing the kind of training to be given the alien, the position or duties for which the training will prepare him, and giving the reason such training cannot be obtained outside the United States. Only incidental production necessary to the training is permitted provided a U.S. worker is not thereby displaced.

Approval of petition

When a petition is approved, the petitioner is notified and a copy of the petition is sent to the American consul endorsed to show the classification accorded the alien, the period in which the alien must obtain his visa, and the period of time for which the alien's admission is authorized. In the cases of nationals who are not required to present visas to enter the United States, the copy of the approved petition is forwarded to the Service officer in charge at the alien's proposed port of entry. The validity of the approval of a petition for visa issuance may not exceed 1 year from the date of approval and, in an H–2 petition, may not exceed the date to which any Department of Labor certification is valid. The initial period of admission of the beneficiaries may not exceed the date until which the petition is valid. Subsequent extensions of temporary stay may be made in increments of not more than 12 months each. However, when the originally approved petition was supported by a Department of Labor certification, no extension of temporary stay is authorized unless a current certification is issued by that Department and any extension authorized will not exceed the date until which the current certification is valid. An employer may include any number of aliens in a petition to extend the temporary stay of his employees. An H–2 alien may not be granted an extension which would result in an unbroken stay of more than 3 years. Section 281 of the Act requires that a fee of $10 shall be charged for extension of temporary stay.

Denial of petition

Upon denial of a petition, the petitioner is notified of the reasons for denial and of the right to appeal to the regional commissioner of the Immigration and Naturalization Service. By regulation, a fee of $10 is charged for filing an appeal.

Change to or from an "H" classification

Section 248 of the Immigration and Nationality Act provides for change from one nonimmigrant classification to another nonimmigrant classification. Under this section, an "H" alien may apply for a change to a classification such as a visitor or student. Conversely, a nonimmigrant such as a visitor or student may apply for change to an "H" classification by submitting an application and paying the $25 fee required by section 281 of the Act. Before the application may be approved, however, the prospective employer or trainer must file and receive approval of a petition filed in the alien's behalf. Transit aliens, crewmen, and exchange aliens are not eligible for change to an "H" classification.

SPECIAL FOREIGN LABOR PROGRAMS INVOLVING WESTERN HEMISPHERE ALIENS

Special foreign labor programs have been established for the admission of temporary workers under section 101(a)(15)(H)(ii) of the Act. With regard to the admission of such workers, House Report No. 1365, dated February 14, 1952 (pp. 44 and 45), states: "These provisions of the bill grant the Attorney General sufficient authority to admit temporarily certain alien workers, industrial, agricultural, or otherwise, for the purpose of alleviating labor shortages as they exist or may develop in certain areas or certain branches of American productive enterprises . . ." In the report of a special subcommittee of the House Judiciary Committee on the administration of the Immigration and Nationality Act, dated February 28, 1955, it is stated on page 131, "It is the sense of the subcommittee that . . . Congress intended that workers employed in seasonally available jobs should be considered as temporary workers." Because of the existence of special legislation contained in the Agricultural Act of October 31, 1949, as amended and extended, providing specifically for temporary employment of Mexican agricultural laborers, the Service did not approve petitions in behalf of such persons. That legislation expired December 31, 1964.

The special temporary labor programs involving Western Hemisphere aliens which have been established are as follows:

British West Indian and Bahamian agricultural laborers

During World War II, British West Indian and Bahamian laborers were brought to the United States to work in various agricultural operations, particularly in Florida. With the enactment of the Immigration and Nationality Act of 1952, the present program was developed as the result of negotiations between large agricultural associations in the United States and representatives of various governments in the West Indies. Presently Jamaica, Windward Islands, Leeward Islands, Barbados, Trinidad, Guyana, and British Honduras are actively engaged in the program.

An agreement concerning employment of the workers must be signed by the employer and accepted by the Service before a petition for the workers may be approved. The West Indies government concerned requires that the employer and the employee sign an agreement and that the worker also sign an agreement with his government. The two agreements required by the West Indies government concerned specify the conditions with which the employer and the worker agree to comply. Workers entering under a petition from one association may later be transferred for work with another association.

Canadian woodsmen and agricultural workers

In February 1942, the Joint Economic Committees of Canada and the United States signed an agreement to facilitate the movement of farm labor across the common boundary. This agreement has in recent years included woodsmen and is renewed on an annual basis.

The Canadian Employment Service maintains a pool of about 9,000 woodsmen from which to fill the quotas of various employers in the United States. The Boston regional office of the U.S. Bureau of Employment Security maintains controls to assure that the limitations set by the Canadian Government on the number of Canadian woodsmen who may be imported is not exceeded.

Pursuant to the agreement of the Joint Economic Committees already referred to, seasonal agricultural workers from Canada have been admitted to the United States under section 101(a)(15)(H)(ii). These workers include bean pickers, apple pickers, and potato pickers for Maine; apple pickers for New York; and general agricultural workers for Vermont.

Temporary alien laborers in the American Virgin Islands

This program was begun in 1956 as a result of recommendations by a special subcommittee of the House Committee on the Judiciary, which appears on page 131 of the Report on the Administration of the Immigration and Nationality Act, dated February 28, 1955. The program was intended originally only for aliens from the British West Indies but it has been extended to include aliens from the French and Dutch islands in the West Indies.

A special agreement must be signed between the employer of the alien worker and the U.S. Government, listing the conditions with which the employer agrees to comply.

THE IMMIGRATION AND NATIONALITY ACT

Section 101(a)(15).—The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens:

> (H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as an industrial trainee.

Section 214.—(c) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

Western Hemisphere foreign laborers admitted into the United States, years ended June 30, 1957–66

Country of last permanent residence	1957–66	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Total	3, 113, 361	465, 713	433, 446	463, 294	446, 025	312, 343	302, 975	239, 307	234, 379	153, 904	61, 975
Agricultural laborers:											
Mexico [1]	2, 820, 082	450, 422	418, 885	447, 535	427, 240	294, 149	282, 556	195, 450	181, 738	[2] 103, 563	18, 544
Canada	78, 859	7, 015	7, 381	6, 892	7, 804	8, 543	8, 462	9, 832	9, 530	8, 149	5, 251
British Guiana	210	-------	-------	99	-------	105	5	1	-------	-------	-------
British Honduras	323	-------	-------	-------	107	-------	216	-------	-------	-------	-------
West Indies	112, 412	8, 276	7, 180	8, 768	10, 874	9, 546	11, 736	15, 406	12, 667	15, 397	12, 562
Others: [3]											
Canadian woodsmen	57, 140	-------	-------	-------	-------	-------	-------	14, 166	17, 916	13, 281	11, 777
U.S. Virgin Islands workers	44, 335	-------	-------	-------	-------	-------	-------	4, 452	12, 528	13, 514	13, 841

[1] Mexican nationals admitted under Public Law 78 prior to Dec. 31, 1964.

[2] Includes 100,876 admitted under Public Law 78.

[3] Not reported prior to 1963.

XXV.—POPULATION GROWTH IN MEXICO

Prepared for the

Select Commission on Western Hemisphere Immigration

by

Nathan L. Whetten
The University of Connecticut

POPULATION GROWTH IN MEXICO

This study is a supplement to a previous one made by the author in 1963 called *Population Trends in Mexico*[1] and differs in the following major respects.

1. The Mexican states which border onto the United States are grouped into a separate region and all tabulations have been made accordingly. This means that developments in these states just across the United States border may be clearly distinguished from those farther south.

2. The data are arranged so that changes occurring during each of the two past decades, 1940–50 and 1950–60, will be clearly evident.

3. An attempt is made to estimate Mexico's probable population for 1970, not only for the country as a whole but also for each state[2] and region of the nation.

REGIONS OF MEXICO

In order to show major variations, the states are grouped into five major regions as indicated in figure 1. The six northern states bordering the United States are placed in a separate region called the U.S. Border States. It is assumed that in these states Mexicans are likely to have more direct contact with the United States in such capacities as temporary workers, daily commuters and frequent visitors (see fig. 1). They are likely to have more intercommunication, generally. Comparisons may thus be made of areas nearest the United States with areas progressively farther away.

In the border grouping are found the six states of Baja California, Chihuahua, Coahuila, Nuevo León, Sonora, and Tamaulipas (fig. 1). The remaining states in what was formerly called the North Pacific and the Northern regions are grouped into a region called Other Northern States (fig. 1). The rest of the regions are the same as those used in the 1963 study.

The regions with their respective land areas, the 1960 population, and population density are shown in table 1. It will be noted that the region called U.S. Border States has almost twice as much land area as any other, but also is the most sparsely populated of any region. It contains 40.6 percent of the nation's land area but only 15.8 percent of its population (see table 1). It has a population density of only 6.9 inhabitants per square kilometer as compared with 17.8 for the country as a whole (col. 5).

The region called Other Northern States is also sparsely populated and contains 21.2 percent of Mexico's land area, but only 11.3 percent of her population. The density

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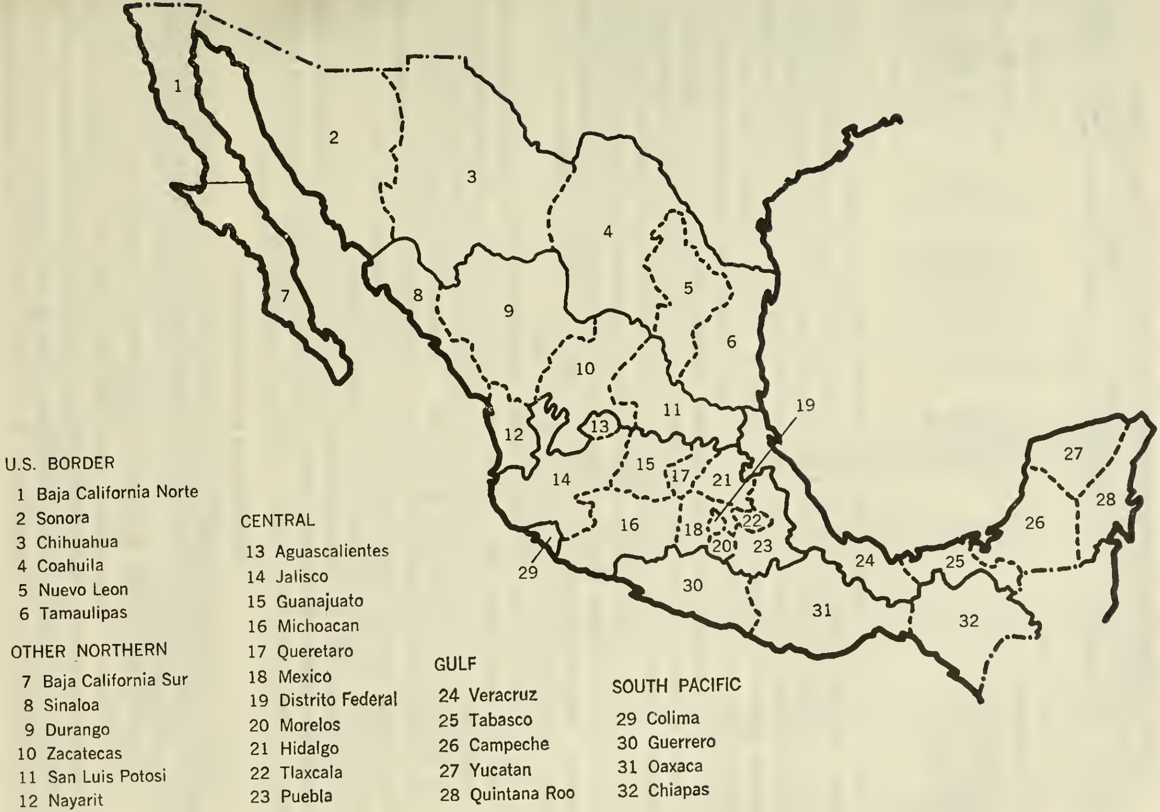
[1] It was made for the Committee on the Judiciary, Subcommittee No. 1, House of Representatives of the United States. It was published as "Population Trends in Mexico," Special Series No. 5, U.S. Government Printing Office, Washington: 1963, pp. 51–79.

[2] Mexico has two territories, Baja California Sur and Quintana Roo, as well as a Federal district. For convenience, all will be referred to as states in this report.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U.S. BORDER
1 Baja California Norte
2 Sonora
3 Chihuahua
4 Coahuila
5 Nuevo Leon
6 Tamaulipas
OTHER NORTHERN
7 Baja California Sur
8 Sinaloa
9 Durango
10 Zacatecas
11 San Luis Potosi
12 Nayarit
CENTRAL
13 Aguascalientes
14 Jalisco
15 Guanajuato
16 Michoacan
17 Queretaro
18 Mexico
19 Distrito Federal
20 Morelos
21 Hidalgo
22 Tlaxcala
23 Puebla
GULF
24 Veracruz
25 Tabasco
26 Campeche
27 Yucatan
28 Quintana Roo
SOUTH PACIFIC
29 Colima
30 Guerrero
31 Oaxaca
32 Chiapas

FIGURE 1. *Statistical regions and the States of Mexico.*

TABLE 1.—*Land area, number of inhabitants, and density of population in Mexico, 1960*

Regions	Land area		Population		Inhabitants per square kilometer	Percent of population	
	Number square kilometers	Percent of total	Number	Percent		Rural	Urban
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total, Mexico	1, 967, 183	100. 0	34, 923, 129	100. 0	17. 8	49. 3	50. 7
U.S. Border States	798, 089	40. 6	5, 541, 100	15. 8	6. 9	36. 2	63. 8
Other Northern States	416, 926	21. 2	3, 936, 891	11. 3	9. 4	65. 4	34. 6
Central	274, 669	14. 0	17, 099, 160	49. 0	62. 3	41. 6	58. 4
Gulf of Mexico	238, 999	12. 1	4, 056, 676	11. 6	16. 9	58. 1	41. 9
South Pacific	238, 500	12. 1	4, 289, 302	12. 3	18. 0	73. 8	26. 2

in the Other Northern States, although somewhat higher than that of the Border States, is only 9.4 inhabitants per square kilometer. Thus, these two northern regions together contain 61.8 percent of the land area but only 27.1 of the population. This is largely because of the aridity of the land. In these two regions it is so dry that successful farming cannot be carried on without irrigation. Water resources are so scarce that there are comparatively few streams from which irrigation projects might be developed.

The Central region is much more densely populated than any of the others since it has only 14 percent of the land, yet contains about half (49 percent) of the total inhabitants of Mexico. The population density of this region is 62.3 persons per square kilometer. Here is located metropolitan Mexico City where 4,871,000 inhabitants are crowded into the Federal District. Three of Mexico's four largest cities are also found in this area, including Mexico City which, in 1960, had 2,832,133 inhabitants; Guadalajara with 736,800; and Puebla with 289,049.

Finally, the Gulf and the South Pacific regions have almost identical land areas although the South Pacific has slightly more inhabitants with a population density of 18 inhabitants per square kilometer as compared with 16.9 in the Gulf region.

A glance at columns 6 and 7 of table 1 indicates that Mexico's population is almost equally divided between rural and urban inhabitants, with 50.7 percent urban. The population of the Border States tends to be clustered into urban areas to a greater extent than in any other region, with 63.8 percent urban.

The Central area is 58.4 percent urban, the Gulf area 41.9 percent, and the Other Northern States 34.6. The South Pacific is the least urbanized, with only 26.2 percent living in urban areas and 73.8 percent living in rural districts.

POPULATION GROWTH 1940–50

Mexico's population increased from 19.7 million inhabitants in 1940 to 25.8 million in 1950, an increase of 31.2 percent for the 10-year period and an annual average growth of 3.1 percent (see table 2).

The growth was uneven among the regions. The most rapid growth is noted in U.S. Border States, with an average annual rate of 4.2 percent as compared with 3.2 in the Central region, 2.5 in the South Pacific and 2.6 in both the Other Northern and the Gulf regions. The growth in the individual states of each region was also uneven. Fantastically rapid growth was witnessed in the Border state of Baja California, where

TABLE 2.—*Population of Mexico for 1940–50, by Regions and States*

Region and State	Total population (thousands)		Population increases (thousands)	Percentage increase 1940–50	Annual percentage increase
	1940	1950 [1]			
Total, Mexico	19, 653. 5	25, 791. 0	6, 137. 5	31. 2	3. 1
U.S. Border States	2, 617. 7	3, 763. 1	1, 145. 4	43. 8	4. 2
Baja California	79. 0	227. 1	148. 0	187. 3	18. 7
Chihuahua	623. 9	846. 4	222. 5	35. 7	3. 6
Coahuila	550. 7	720. 6	169. 9	30. 9	3. 1
Nuevo León	541. 1	740. 2	199. 1	36. 8	3. 7
Sonora	364. 2	510. 6	146. 4	40. 2	4. 0
Tamaulipas	458. 8	718. 2	259. 4	56. 5	5. 7
Other Northern States	2, 489. 0	3, 138. 1	649. 1	26. 1	2. 6
Baja California	51. 5	60. 9	9. 4	18. 3	1. 8
Durango	483. 8	629. 9	146. 1	30. 2	3. 0
Nayarit	216. 7	290. 1	73. 4	33. 9	3. 4
San Luís Potosí	678. 7	856. 1	177. 4	26. 1	2. 6
Sinaloa	492. 8	635. 6	142. 8	29. 0	2. 9
Zacatecas	565. 5	665. 5	100. 0	17. 7	1. 8
Central	9, 430. 0	12, 449. 2	3, 019. 2	32. 0	3. 2
Aguascalientes	161. 7	188. 1	26. 4	16. 3	1. 6
Distrito Federal	1, 757. 5	3, 050. 5	1, 293. 0	73. 6	7. 4
Guanajuato	1, 046. 5	1, 328. 7	282. 2	27. 0	2. 7
Hidalgo	771. 8	850. 4	78. 6	10. 2	1. 0
Jalisco	1, 418. 3	1, 746. 8	328. 5	23. 2	2. 3
México	1, 146. 0	1, 392. 6	246. 6	21. 5	2. 2
Michoacán	1, 182. 0	1, 422. 7	240. 7	20. 4	2. 0
Morelos	182. 7	272. 8	90. 1	49. 3	4. 9
Puebla	1, 294. 6	1, 625. 8	331. 2	25. 6	2. 6
Querétaro	244. 8	286. 2	41. 4	16. 9	1. 7
Tlaxcala	224. 1	284. 6	60. 5	27. 0	2. 7
Gulf of Mexico	2, 432. 4	3, 068. 9	636. 5	26. 2	2. 6
Campeche	90. 5	122. 1	31. 6	34. 9	3. 5
Quintana Roo	18. 8	27. 0	8. 2	43. 6	4. 4
Tabasco	285. 6	362. 7	77. 1	27. 0	2. 7
Veracruz	1, 619. 3	2, 040. 2	420. 9	26. 0	2. 6
Yucatán	418. 2	516. 9	98. 7	23. 6	2. 4
South Pacific	2, 684. 4	3, 360. 0	675. 6	25. 2	2. 5
Colima	78. 8	112. 3	33. 5	42. 5	4. 3
Chiapas	679. 9	907. 0	227. 1	33. 4	3. 3
Guerrero	732. 9	919. 4	186. 5	25. 4	2. 5
Oaxaca	1, 192. 8	1, 421. 3	228. 5	19. 2	1. 9

[1] State and region unknown for 11,763 persons in 1950.

Data from *Dirección General de Estadística, Censos de Población*, 1940 and 1950.

growth for the entire 10-year period was 187.3 percent and the average annual rate 18.7 percent. The states of Sonora and Tamaulipas of the Border region also displayed rapid growth, with an average annual rate of 4 and 5.7 percent, respectively.

In the Central Region the Federal District increased 73.6 percent during the 10-year period, or an average of 7.4 percent annually.

POPULATION GROWTH 1950–60

Mexico's population growth was not only continued at a rapid rate but actually became accelerated considerably during the decade 1950–60. The total population increased from 25.8 million inhabitants in 1950 to 34.9 million in 1960, an increase of 35.5 percent in the 10-year period, or an average of 3.5 percent yearly (see table 3). Again, the greatest percentage increase was in the U.S. Border States, which experienced an even greater percentage increase than during the previous decade (47.3 percent as compared with 43.8).

The Central Region again had the second highest rate of growth, with an increase of 37.4 percent during the decade. The slowest rate of growth in the 1950–60 decade was in the Other Northern States, with a percentage of 25.5 for the decade. This region was followed closely by the South Pacific, with 27.7 percent. The Gulf States increased 32.2 percent.

TABLE 3.—*Population of Mexico for 1950–60 by regions and states*

Region and state	Total population (thousands)		Population increase (thousands)	Percentage increase 1950–60	Annual percentage increase
	1950[1]	1960			
Total, Mexico	25,791.0	34,923.1	9,132.1	35.4	3.5
U.S. Border States	3,763.1	5,541.2	1,778.1	47.3	4.7
Baja California	227.1	520.2	293.1	129.1	12.9
Chihuahua	846.4	1,226.8	380.4	43.9	4.6
Coahuila	720.6	907.7	187.1	26.0	2.6
Nuevo León	740.2	1,078.9	338.7	45.8	4.6
Sonora	510.6	783.4	272.8	53.4	5.3
Tamaulipas	718.2	1,024.2	306.0	42.6	4.3
Other Northern States	3,138.1	3,936.8	798.7	25.5	2.6
Baja California	60.9	81.6	20.7	34.0	3.4
Durango	629.9	760.8	130.9	20.8	2.1
Nayarit	290.1	389.9	99.8	34.4	3.4
San Luís Potosí	856.1	1,048.3	192.2	22.5	2.3
Sinaloa	635.6	838.4	202.8	31.9	3.2
Zacatecas	665.5	817.8	152.3	22.9	2.3
Central	12,449.2	17,099.1	4,649.9	37.4	3.7
Aguascalientes	188.1	243.3	55.2	29.3	2.9
Distrito Federal	3,050.5	4,870.9	1,820.4	59.7	6.0
Guanajuato	1,328.7	1,735.5	406.8	30.6	3.1
Hidalgo	850.4	994.6	144.2	17.0	1.7
Jalisco	1,746.8	2,443.3	696.5	39.9	4.0
México	1,392.6	1,897.8	505.2	36.3	3.6
Michoacán	1,422.7	1,851.9	429.2	30.2	3.0
Morelos	272.8	386.3	113.5	41.6	4.2
Puebla	1,625.8	1,973.8	348.0	21.4	2.1
Querétaro	286.2	355.0	68.8	24.0	2.4
Tlaxcala	284.6	346.7	62.1	21.8	2.2
Gulf of Mexico	3,068.9	4,056.7	987.8	32.2	3.2
Campeche	122.1	168.2	46.1	37.8	3.8
Quintana Roo	27.0	50.2	23.2	85.9	8.6
Tabasco	362.7	496.3	133.6	36.8	3.7
Veracruz	2,040.2	2,727.9	687.7	33.7	3.4
Yucatán	516.9	614.1	97.2	18.8	1.9
South Pacific	3,360.0	4,289.3	929.3	27.7	2.8
Colima	112.3	164.4	52.1	46.4	4.6
Chiapas	907.0	1,210.9	303.9	33.5	3.4
Guerrero	919.4	1,186.7	267.3	29.1	2.9
Oaxaca	1,421.3	1,727.3	306.0	21.5	2.2

[1] State and Region unknown for 11,763 persons in 1950.
Data from *Direccion General de Estadística, Censos de Población*, 1950–60.

There were rather wide variations in population growth among the states in each region. While Baja California did not increase proportionately as much as during the previous decade (129.1 percent in 1950–60 as compared with 187.3 percent in 1940–50), the rate of increase was still 4.7 percent annually. Rates of increase in this Border region were greater than in the previous decade for the states of Chihuahua, Nuevo León, and Sonora. They were somewhat less than previously in Coahuila and Tamaulipas, although even in this latter state the annual rate for 1950–60 was 4.3 percent.

In the Central region, the rate of increase was greatest in the Distrito Federal, although less than the spectacular increase registered during the previous decade—59.7 percent in 1960 as compared with 73.6 percent in 1950. The rates of growth for the states of Morelos, 4.2 percent per year, and Jalisco, 4.0 percent annually, were also outstanding in the 1950–60 decade.

During the decade ending in 1960, three of the five states in the Gulf region showed increased rates of growth, including Quintana Roo, Tabasco, and Veracruz. Campeche showed a slight increase and Yucatán registered a decline in the annual rate of increase from 2.4 percent in 1950 to 1.9 percent in 1960.

In the Other Northern States, the rate of growth was the same for the decade 1950–60 as for the previous decade (2.6 percent annually). This was the lowest rate in any of the regions in 1950–60, although only slightly lower than that of the South Pacific region (2.8 percent).

Pronounced differences in regional growth of Mexico's population must be attributed largely to internal migrations. Differences in birthrates and death rates are simply not great enough to account for the differences in state and regional rates of growth; and, as previously indicated, there has been very little immigration.

A recent preliminary report on a study of internal migration in Mexico,[3] by Gustavo Cabrera, presents data indicating that all of the Border states except Coahuila gained greatly from migration from other states during the decade 1950–60. The gains in the Border states ranged from 13.9 percent in Tamaulipas to 61.6 percent of the total population increase in Baja California. In no other region did so many states gain through internal migration from other states. In other words, there appears to be a definite migration to the Border states from farther south. None of the states in the Other Northern States gained through migration. All of them lost more than they gained except Nayarit, which registered no change.

In the Central region, only three states experienced a net gain through internal migration from other states. These were the Federal District, with 33.3 percent and the two adjoining states of Mexico (32.2 percent) and Morelos with 24.2 percent. All other states in the Central region suffered a net loss through migration. This would indicate the existence of strong waves of migration into metropolitan Mexico City and surrounding areas from other states, particularly in the Central region.

ESTIMATED POPULATION GROWTH 1960–70

The attempt to forecast future growth of a population is rather a precarious business, especially in a developing country where census enumerations and the registration of births and deaths leave much to be desired in terms of accuracy and completeness. Fortunately, projections were recently made for Mexico by two competent Mexican demographers, Benítez and Cabrera.[4] In making their projections they took into account the birth rates and death rates over a long period of time, the infant mortality rate, the age and sex composition of the population, life expectancy, immigration, and many other factors. Their preliminary calculations led them to believe that the 1960 population was underenumerated in the census by more than 1 million inhabitants, mostly in the age groups under 5 years. They made adjustments upward in the various age groups to compensate for this underenumeration, thus increasing the reported population of 1960 by a corresponding amount before applying their various formulas to arrive at future estimates. By these methods they arrived at a total population estimate for Mexico in 1970 of 50,826,100 inhabitants. They further estimated a population of 69,268,800 inhabitants for 1980. The authors made similar calculations for each state in the nation.

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[3] Gustavo Cabrera, A., *Estimación de la Migración Interna de México, 1950–1960* (unpublished as of 1966).

For the purposes of the present study, we have computed the estimated percentage change by states and regions for 1960–70 as estimated by Benítez and Cabrera and have applied these rates of increase to the enumerated population of 1960. This will give a slightly more conservative estimate than theirs, although the differences will not be great. The results are shown in table 4. According to these estimates, the following observations might be made:

1. Mexico will have an estimated population of 49,561,300 inhabitants by 1970. This would mean an increase of 14,638,200 people, a gain of 41.9 percent from 1960 to 1970. It would give an average annual percentage increase of 4.2, one of the highest in the world (see fig. 2).

2. The U.S. Border States are expected to have a much higher rate of growth than any other region, with a total increase of 56.5 percent for the 10-year period. Baja California would experience the largest percentage of any of the states in the nation, with 112.4 percent, or more than double the 1960 population. Although these Border States are sparsely populated, they now contain seven of the 17 largest cities in the nation having over 100,000 inhabitants. Two of these are located in Baja California (Mexicali and Tiajuana) and two are in the state of Chihuahua, Ciudad Juarez and Chihuahua City. Then there is Torreón in Coahuila, Monterrey in Nuevo León and Tampico in the state of Tamaulipas. The city of Monterrey is one of the three largest cities in Mexico and now has over 600,000 inhabitants. It is to these large cities and their metropolitan areas that large numbers of people are now moving from farther south.

3. The Central area containing Mexico City shows the second highest estimated percentage growth for the decade with 42.5 percent. Much of this may be attributed to metropolitan Mexico City. If one deducts the Federal District from this region, the resulting percentage growth would be 37.2 percent. The slowest projected growth in this Central area is in the states of Aguascalientes and Hidalgo. The fastest growth in

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[4] Raul Benítez Zenteno and Gustavo Cabrera Acevedo. *Projecciones de la Población de Mexico 1960–1980.* Banco de Mexico, S.A., 1966.

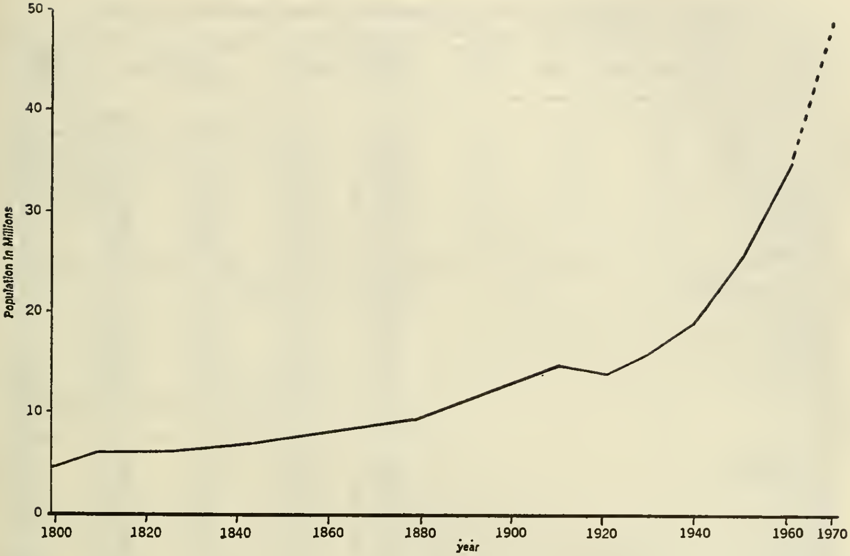

FIGURE 2. *Growth of population in Mexico 1800–1970. (Dotted line estimated.) Data from Dirección General de Estadística and table 5.*

the region outside the Federal District is estimated forMorelos (56.2 percent) and the state of Mexico with 52.3 percent. As indicated earlier, both of these rapidly growing states adjoin the Federal District and obviously are participating in the rapid expansion of population in that large metropolitan area.

4. The region with the lowest rate of estimated growth for 1970 is that of the South Pacific, with a projected increase of 31.8 percent for the decade. There is no city in this region with as many as 100,000 inhabitants. Communication facilities are poor. The area is mountainous, with relatively little level farm land. This region contains the highest proportion of indigenous inhabitants and the death rate is somewhat higher than in other regions.

5. The Gulf region of Mexico is calculated to have a 37-percent increase in population by 1970. This area contains two large cities: Veracruz and Merida, Yucatán. Much of the area is semitropical and would seem to have good possibilities for future development.

6. An increase of 35.1 percent is estimated for the Other Northern region. The largest percentages of increase for this region are projected for the states of Nayarit and Sinaloa, both situated along the Pacific coast and having excellent agricultural resources where considerable expansion may be possible, provided additional irrigation projects can be developed. Slower growth appears to be likely in Durango and Zacatecas, both of which are old mining centers and areas of extensive cattle raising.

TABLE 4.—*Population of Mexico in 1960 and projected population for 1970*

Region and state	Total population (thousands)		1960–70 projected increase		Estimated annual percent increase
	Enumerated 1960	Estimated 1970	Number (thousands)	Percent	
Total, Mexico	34, 923. 1	49, 561. 3	14, 638. 2	41. 9	4. 2
U.S. Border States	5, 541. 2	8, 670. 9	3, 129. 7	56. 5	5. 7
Baja California	520. 2	1, 104. 9	584. 7	112. 4	11. 2
Chihuahua	1, 226. 8	1, 891. 7	664. 9	54. 2	5. 4
Coahuila	907. 7	1, 209. 1	301. 4	33. 2	3. 3
Nuevo León	1, 078. 9	1, 703. 6	624. 7	57. 9	5. 8
Sonora	783. 4	1, 258. 1	474. 7	60. 6	6. 1
Tamaulipas	1, 024. 2	1, 503. 5	479. 3	46. 8	4. 7
Other Northern States	3, 936. 8	5, 318. 1	1, 381. 3	35. 1	3. 5
Baja California	81. 6	108. 9	27. 3	33. 5	3. 4
Durango	760. 8	954. 0	193. 2	25. 4	2. 5
Nayarit	389. 9	571. 2	181. 3	46. 5	4. 7
San Luís Potosí	1, 048. 3	1, 423. 6	375. 3	35. 8	3. 6
Sinaloa	838. 4	1, 195. 6	357. 2	42. 6	4. 3
Zacatecas	817. 8	1, 064. 8	247. 0	30. 2	3. 0
Central	17, 099. 1	24, 360. 7	7, 261. 6	42. 5	4. 3
Aguascalientes	243. 3	309. 7	66. 4	27. 3	2. 7
Distrito Federal	4, 870. 9	7, 593. 7	2, 722. 8	55. 9	5. 6
Guanajuato	1, 735. 5	2, 348. 1	612. 6	35. 3	3. 5
Hidalgo	994. 6	1, 281. 0	286. 4	28. 8	2. 9
Jalisco	2, 443. 3	3, 386. 4	943. 1	38. 6	3. 9
México	1, 897. 8	2, 890. 3	992. 5	52. 3	5. 2
Michoacán	1, 851. 9	2, 426. 0	574. 1	31. 0	3. 1
Morelos	386. 3	603. 4	217. 1	56. 2	5. 6
Puebla	1, 973. 8	2, 607. 4	633. 6	32. 1	3. 2
Querétaro	355. 0	461. 9	106. 9	30. 1	3. 0
Tlaxcala	346. 7	452. 8	106. 1	30. 6	3. 1
Gulf of Mexico	4, 056. 7	5, 559. 1	1, 502. 4	37. 0	3. 7
Campeche	168. 2	237. 3	69. 1	41. 1	4. 1
Quintana Roo	50. 2	84. 5	34. 3	68. 4	6. 8
Tabasco	496. 3	703. 8	207. 5	41. 8	4. 2
Veracruz	2, 727. 9	3, 729. 0	1, 001. 1	36. 7	3. 7
Yucatán	614. 1	804. 5	190. 4	31. 0	3. 1
South Pacific	4, 289. 3	5, 652. 5	1, 363. 5	31. 8	3. 2
Colima	164. 4	241. 0	76. 6	46. 6	4. 7
Chiapas	1, 210. 9	1, 605. 7	394. 8	32. 6	3. 3
Guerrero	1, 186. 7	1, 610. 4	423. 7	35. 7	3. 6
Oaxaca	1, 727. 3	2, 195. 4	468. 1	27. 1	2. 7

Table 5 shows the population increase by decades for each region in 1940–50, 1950–60, and the estimated percentage increase for 1960–70 (see table 5).

Perhaps it should be kept in mind that although the greatest percentage increase for the decade 1960–70 is projected for the U.S. Border States, these states are so thinly populated that the actual increase will amount to only slightly more than 3 million inhabitants as compared with a projected increase of over 7 million in the Central region.

How accurate will these estimates prove to be? For the country as a whole this will depend on what happens to the birth rates and the death rates in the immediate future. Since there has been very little immigration to Mexico in recent years, the explanation

TABLE 5.—*Population increase in Mexico by regions: 10-year intervals, 1940–70*

Regions	1940–50 percent increase	Annual percent increase	1950–60 percent increase	Annual percent increase	1960–70 percent increase (estimated)	Estimated annual increase
Total Mexico	31. 2	3. 1	35. 4	3. 5	41. 9	4. 2
U.S. Border States	43. 8	4. 4	47. 3	4. 7	56. 5	5. 7
Other Northern	26. 1	2. 6	25. 5	2. 6	35. 1	3. 5
Central	32. 0	3. 2	37. 4	3. 7	42. 5	4. 3
Gulf of Mexico	26. 2	2. 6	32. 2	3. 2	37. 0	3. 7
South Pacific	25. 2	2. 5	27. 7	2. 7	31. 8	3. 2

TABLE 6.—*Annual birth rates, death rates, and rates of natural increase in Mexico, 1940–65* [1]

Year	Birth rates	Death rates	Rates of natural increase	Year	Birth rates	Death rates	Rates of natural increase
1940	44. 3	23. 2	21. 1	1953	45. 0	15. 9	29. 1
1941	43. 5	22. 1	21. 4	1954	46. 4	13. 1	33. 3
1942	45. 5	22. 8	22. 7	1955	45. 1	13. 3	31. 8
1943	45. 5	22. 4	23. 1				
1944	44. 2	20. 6	23. 6	1956	45. 2	11. 7	33. 5
1945	44. 9	19. 5	25. 4	1957	45. 5	12. 7	32. 8
				1958	42. 9	12. 0	30. 9
1946	43. 7	19. 4	24. 3	1959	45. 6	11. 4	34. 2
1947	46. 1	16. 6	29. 5	1960	44. 6	11. 2	33. 4
1948	45. 2	16. 9	28. 3				
1949	45. 2	17. 9	27. 3	1961	44. 2	10. 4	33. 8
1950	45. 5	16. 2	29. 3	1962	44. 2	10. 5	33. 7
				1963	44. 1	10. 4	33. 7
1951	44. 6	17. 3	27. 3	1964	44. 8	9. 9	34. 9
1952	43. 8	15. 0	28. 8	1965	44. 2	9. 5	34. 7

[1] Data from *Dirección General de Estadística.*

for the exceedingly rapid increase in population must be sought in the rate of natural increase, i.e., the excess of births over deaths. What has been happening in this respect since 1940 is apparent from table 6 and figure 2. In 1940, the birth rate was recorded as 44.3 per thousand inhabitants and the death rate as 23.2. This gave a rate of natural increase in population of 21.1 (see table 6). The birth rate has remained at this very high level and was recorded as almost identical in 1940 and in 1965 (44.2). It has fluctuated only by a few percentage points one way or the other for the past 25 years. The death rate, on the other hand, has fallen rapidly and steadily from 23.2 in 1940 to only 9.5 in 1965. The rate of natural increase, therefore, has risen from 21.4 in 1940 to 34.7. The result is clearly evident from figure 3.

Future increase in Mexico's population will therefore depend largely on what happens to the birth rate. Obviously, any evidence of a widespread use of birth control practices has been conspicuously absent until now. Whether or not these will become widely enough accepted to make any great impact on the birth rate in the immediate future remains to be seen. It is interesting to note that a number of national and international conferences have been taking place recently among Latin American scholars, including Mexicans, with reference to the "population explosion" and it seems not unlikely that as these matters are discussed more openly, the population will become increasingly aware of the advantages to be gained in social and economic well-being through family planning.

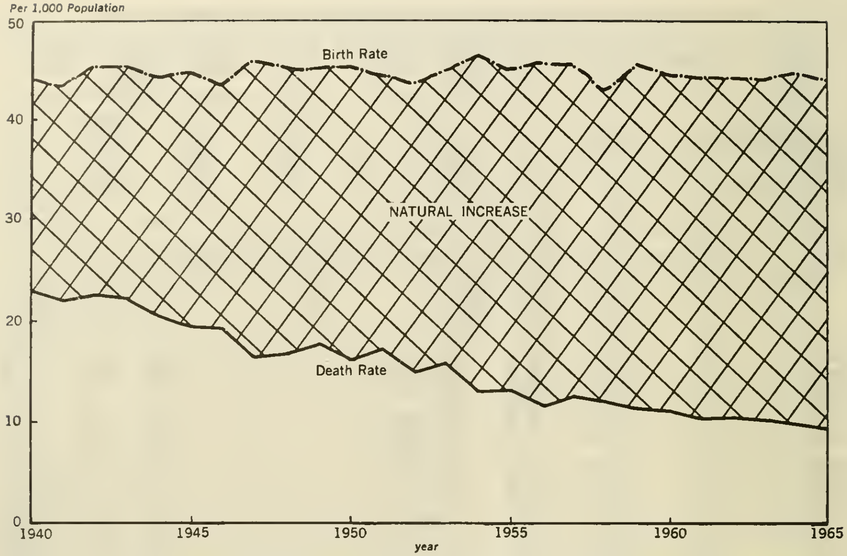

FIGURE 3. *Trend in birth rates, death rates, and natural increase of population in Mexico, 1940–65. Data from table 6.*

Although Mexico's population has been increasing rapidly, it is important to note that industrial and agricultural production have more than kept pace with it. Thus, the Nacional Financiera, S.A., of Mexico calculates that the gross national product *per inhabitant* in Mexico has increased (at 1950 prices) from 1,150 *pesos* in 1940 to 2,300 *pesos* in 1965. In other words, the gross national product per inhabitant has doubled since 1940, even taking into account the rather spectacular increase in population.[5]

Agricultural production has also greatly increased in recent years. There was considerable decline in production during 1930–40 but this has been overcome and the production index per capita rose from 134.9 in 1940 to 598.3 in 1965.[6] This increase in agriculture production has been due to a number of factors, including the development of irrigation projects which have brought new land into production, the improvement of seed selection, the establishment of agricultural experiment stations and extension services.

These improvements are by no means universal in Mexico, however, since a large proportion of the farmland is still tilled on a subsistence basis on tiny plots with techniques that have seen little or no improvement since colonial times.

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[5] Nacional Financiera, S.A. *La Economia Mexicana en Cifras*, Mexico, 1966, table 10, p. 53.

[6] Nacional Financiera, S.A., op. cit., p. 61.

In conclusion, it should be pointed out that although Mexico's population is increasing very rapidly, her agricultural and industrial production seem to have kept pace accordingly. How long this will continue is problematical. Certainly there are other problems that have a bearing on the population problem. One of these is the lack of an equitable distribution of the fruits of increased production. Despite seeming prosperity in many quarters, widespread poverty still prevails throughout the country. While production has greatly increased on some farms, most are too small to provide a living for their inhabitants. As a result of overcrowding on the farms, there are constant streams of migration of population from rural areas to the rapidly growing cities. Many of these migrants move into the city slums, where they become virtually trapped in substandard and overcrowded housing. According to the census of 1960 55.6 percent of all dwellings in Mexico contained only one room per family. In the urban areas, 44.5 percent of the dwellings had only one room, as did 66.2 percent in the rural areas.[7]

Looking toward the future, it seems unlikely that the death rate will decline much more in the immediate future, without greatly improved living standards among large segments of the population. Future growth of population, therefore, depends largely on the birth rate which, as yet, shows few if any signs of declining. What the future will offer in this regard remains to be seen.

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[7] *Annuario Estadístico de los Estados Unidos Mexicanos* 1962–63, Mexico, 1965, p. 119.

[From "Farm Labor Developments," November 1968, U.S. Department of Labor, Washington, D.C.]

RESTRICTIVE ADMISSION STANDARDS: PROBABLE IMPACT ON MEXICAN ALIEN COMMUTERS

(By Stanley M. Knebel)

Every weekday morning, thousands of residents of Mexican towns near the U.S. border commute to jobs in the United States. At the border, they show their I–151 identification cards, popularly known as "green cards," which entitle them to take employment in the United States. It has generally been recognized that the unrestricted admission of greencard workers on a daily basis adversely affects the wages and working conditions of similarly employed U.S. residents. However, comprehensive data detailing the extent and significance of alien commuter employment have not been available before this year.

In November and December of 1967, the Immigration and Naturalization Service required that each holder of an I–151 identification card who was a daily border crosser complete a questionnaire which called for his occupation and place of employment. During January 1968, the Department of Labor conducted a special employment and wage survey of establishments that employed commuters in the Laredo, Texas area. Based on the data collected in these two studies, certain conclusions can be drawn in regard to the number, occupational distribution, and wages of daily commuters. It is also possible to estimate the impact on the commuter flow that would result from various restrictive wage standards. This article summarizes the two studies and discusses the probable impact of alternative restrictions.

NUMBER OF ALIEN COMMUTERS

The Immigration and Naturalization Service survey showed some 40,000 workers commuting daily across the Mexican border to work in the United States. Crossing points in Texas accounted for 49 percent of the total, while 38 percent crossed into California and 13 percent into Arizona. (See Table 1.) More than four-fifths of the commuters were concentrated at five ports of entry along the border: 29 percent at El Paso, Texas; 19 percent at each of the two major California parts, San Ysidro and Calexio; 9 percent at San Luis, Arizona; and 7 percent at Laredo, Texas. The only other crossing points with more than 500 commuters were Brownsville, Hidalgo, and Eagle Pass, Texas and Nogales, Arizona. (See Tables 2, 3, and 4.)

TABLE 1.—NUMBER OF MEXICAN ALIEN COMMUTERS, BY STATE AND OCCUPATION, 1967

Occupation	Total	Texas	California	Arizona
Total	40, 176	19, 714	15, 284	5, 178
Building occupations	2, 421	1, 801	521	99
Carpenters	895	732	131	32
Painters	487	319	153	15
Other building occupations	1, 039	750	237	52
Business occupations	3, 285	2, 405	429	451
Cashiers	232	167	28	37
Clerks, office	354	233	47	74
Clerks, sales	1, 713	1, 248	207	258
Clerks, stock and receiving	309	232	64	13
Managers	377	309	41	27
Secretaries	199	150	24	25
Other business occupations	101	66	18	17
Hotel and restaurant occupations	2, 235	1, 308	812	115
Bartenders	93	56	28	9
Bellhops	35	25	10	0
Chambermaids	223	100	108	15
Cooks	651	390	232	29
Kitchen helpers	675	410	236	29
Waiters, waitresses	328	228	70	30
Other hotel and restaurant occupations	23	4	19	0
Other occupations	32, 235	14, 200	13, 522	4, 513
Automobile shop workers	536	246	253	37
Beauty operators and barbers	72	53	19	0
Custodial workers	344	215	116	13
Drivers, truck	1, 093	647	315	131
Farmworkers	16, 035	3, 436	9, 171	3, 428
Fishermen	183	92	91	0
Florists	41	3	38	0
Food processing occupations	848	524	299	25
Gardeners	534	210	301	23
Hospital helpers	88	53	17	18
Jewelers	39	16	22	1
Laborers, general	3, 668	2, 517	940	211
Laundry workers	590	292	245	53
Maids, private household	2, 779	2, 169	412	198
Metalworkers	1, 627	1, 435	147	45
Parking lot attendants	47	12	34	1
Professional occupations	342	244	44	54
Repair occupations	248	196	49	3
Sewing machine operators	1, 167	809	290	68
Service station workers	227	150	58	19
Upholsterers	222	125	94	3
Warehousemen	255	164	54	37
Miscellaneous	1, 250	592	513	145

Source: I. & N.S. Commuter Census, November–December 1967.

TABLE 2.—NUMBER OF MEXICAN ALIEN COMMUTERS IN ARIZONA, BY PORT OF ENTRY AND OCCUPATION, 1967

Occupation	Total	San Luis	Nogales	Douglas	Other ports[1]
Total	5,178	3,553	1,118	380	127
Building occupations	99	12	56	12	19
Carpenters	32	5	17	5	5
Painters	15	0	12	1	2
Other building occupations	52	7	27	6	12
Business occupations	451	52	372	21	6
Cashiers	37	0	34	3	0
Clerks, office	74	5	69	0	0
Clerks, sales	258	40	201	12	5
Clerks, stock and receiving	13	3	9	1	0
Managers	27	3	22	1	1
Secretaries	25	1	22	2	0
Other business occupations	17	0	15	2	0
Hotel and restaurant occupations	115	12	77	13	13
Bartenders	9	0	7	0	2
Busboys	3	2	1	0	0
Chambermaids	15	1	14	0	0
Cooks	29	5	15	5	4
Kitchen helpers	29	3	15	6	5
Waiters, waitresses	30	1	25	2	2
Other occupations	4,513	3,477	613	334	89
Automobile shop workers	37	9	21	2	5
Custodial workers	13	0	11	1	1
Drivers, truck	131	76	31	18	6
Farmworkers	3,428	3,146	73	169	40
Food processing occupations	25	7	8	4	6
Gardeners	23	2	20	1	0
Hospital helpers	18	0	18	0	0
Jewelers	1	0	1	0	0
Laborers, general	211	22	138	38	13
Laundry workers	53	5	16	29	3
Maids, private household	198	41	118	29	10
Metalworkers	45	1	36	7	1
Parking lot attendants	1	0	1	0	0
Professional occupations	54	1	50	3	0
Repair occupations	3	0	2	1	0
Sewing machine operators	68	39	17	11	1
Service station workers	19	1	13	4	1
Upholsterers	3	1	2	0	0
Warehousemen	37	1	35	0	1
Miscellaneous	145	125	2	17	1

[1] Sasabe and Naco, Ariz., and Columbus, N. Mex.

Source: I. & N.S. Commuter Census, November–December 1967.

TABLE 3.—NUMBER OF MEXICAN ALIEN COMMUTERS, IN CALIFORNIA, BY PORT OF ENTRY AND OCCUPATION, 1967

Occupation	Total	San Ysidro	Calexico	Other ports[1]
Total	15,284	7,535	7,690	59
Building occupations	521	431	87	3
Carpenters	131	112	17	2
Painters	153	142	11	0
Other building occupations	237	177	59	1
Business occupations	429	234	189	6
Cashiers	28	18	9	1
Clerks, office	47	35	12	0
Clerks, sales	207	80	122	5
Clerks, stock and receiving	64	43	21	0
Managers	41	31	10	0
Secretaries	24	16	8	0
Other business occupations	18	11	7	0
Hotel and restaurant occupations	812	749	62	1
Bartenders	28	22	6	0
Bellhops	10	8	2	0
Busboys	109	104	5	0
Chambermaids	108	104	4	0
Cooks	232	211	20	1
Kitchen helpers	236	223	13	0
Waiters, waitresses	70	60	10	0
Other hotel and restaurant occupations	19	17	2	0
Other occupations	13,522	6,121	7,352	49
Automobile shop workers	253	184	69	0
Beauty operators and barbers	19	15	4	0
Custodial workers	116	108	7	1
Drivers, truck	315	109	206	0
Farmworkers	9,171	2,894	6,248	29
Fishermen	91	91	0	0
Florists	38	38	0	0
Food processing occupations	299	264	35	0
Gardeners	301	281	19	1
Hospital helpers	17	12	5	0
Jewelers	22	21	1	0
Laborers, general	940	571	365	4
Laundry workers	245	236	9	0
Maids, private household	412	327	83	2
Metalworkers	147	135	12	0
Parking lot attendants	34	33	1	0
Professional occupations	44	40	4	0
Repair occupations	49	42	7	0
Sewing machine operators	290	277	13	0
Service station workers	58	46	10	2
Upholsterers	94	88	6	0
Warehousemen	54	47	7	0
Miscellaneous	513	262	241	10

[1] Tecate and Andrade.

Source: I. & N.S. Commuter Census, November-December 1967.

TABLE 4.—NUMBER OF MEXICAN ALIEN COMMUTERS IN TEXAS, BY PORT OF ENTRY AND OCCUPATION, 1967

Occupation	Total	El Paso [1]	Fabens	Del Rio	Eagle Pass	Laredo	Brownsville	Hidalgo	Other ports [2]
Total	19,714	11,760	279	317	1,635	2,669	1,917	937	200
Building occupations	1,801	1,208	2	26	67	196	169	123	10
Carpenters	732	458	0	14	35	79	89	53	4
Painters	319	214	0	9	11	27	25	33	0
Other building occupations	750	536	2	3	21	90	55	37	6
Business occupations	2,405	997	0	20	247	818	249	69	5
Cashiers	167	58	0	0	16	65	20	7	1
Clerks, office	233	93	0	2	27	92	17	0	2
Clerks, sales	1,248	454	0	10	148	419	167	49	1
Clerks, stock and receiving	232	145	0	1	7	70	5	3	1
Managers	309	171	0	7	24	77	25	5	0
Secretaries	150	51	0	0	15	69	15	0	0
Other business occupations	66	25	0	0	10	26	0	5	0
Hotel and restaurant occupations	1,308	965	0	23	52	141	96	30	1
Bartenders	56	42	0	0	5	4	5	0	0
Bellhops	25	21	0	0	0	3	1	0	0
Busboys	95	70	0	2	9	8	6	0	0
Cooks	390	254	0	12	18	54	32	20	0
Kitchen helpers	410	368	0	7	2	17	11	4	1
Waiters, waitresses	220	139	0	1	10	51	22	5	0
Other hotel and restaurant occupations	4	4	0	0	0	0	0	0	0
Other occupations	14,200	8,590	277	248	1,269	1,514	1,403	715	184
Automobile shop workers	246	133	0	4	11	56	25	17	0
Beauty operators and barbers	53	45	0	0	4	4	0	0	0
Custodial workers	215	175	0	0	1	17	16	6	0
Drivers, truck	647	382	16	5	38	121	45	30	10
Farmworkers	3,436	1,461	204	2	682	312	168	459	148
Fishermen	92	1	0	0	0	5	86	0	0
Florists	3	1	0	0	1	0	1	0	0
Food processing occupations	524	164	1	4	11	19	319	6	0
Gardeners	210	123	0	6	11	46	23	1	0
Hospital helpers	53	42	0	0	1	4	1	5	0
Jewelers	16	8	0	0	2	2	2	2	0
Laborers, general	2,517	1,598	39	107	144	188	361	71	9
Laundry workers	292	203	0	8	8	38	27	8	0
Maids, private household	2,169	1,630	11	19	113	227	114	52	3
Metalworkers	1,435	1,217	0	60	32	23	82	21	0
Parking lot attendants	12	11	0	0	0	1	0	0	0
Professional occupations	244	145	1	3	15	51	26	1	2
Repair occupations	196	153	0	4	3	17	15	4	0
Sewing machine operators	809	554	5	15	128	70	32	5	0
Service station workers	150	67	0	4	13	35	22	8	1
Upholsterers	125	84	0	2	5	25	7	2	0
Warehousemen	164	78	0	0	2	69	11	4	0
Miscellaneous	592	315	0	5	44	184	20	13	11

[1] Includes Cordova and Ysleta.
[2] Fort Hancock, Presidio, Roma, and Progresso.

Source: I. & N. S. Commuter Census, November–December 1967.

OCCUPATIONS OF COMMUTERS

Farmwork was the occupation reported by 16,035 border crossers, or 40 percent of the total—a far greater number than in any other occupation.[1] The proportions were 66 percent for Arizona entry points, 60 percent in California, but only 17 percent in Texas. The major entry points for the Yuma and Imperial Valley vegetable and citrus areas are San Luis, Arizona and Calexico, California, where 89 and 91 percent, respectively, of the commuters were farmworkers.

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[1] The survey was conducted in November and December when seasonal agricultural employment is at or near the peak of activity in border areas. The 16,035 farmworkers included 7,743 who had been doing migratory farmwork in the United States. They returned to Mexico during the survey period and began working as commuters. It is reasonable to assume that most of these workers would migrate again in the spring.

Nine percent of the commuters designated themselves simply as laborers. They probably represent a large portion of the low-skilled segment of the labor force in a wide variety of industrial, service, construction, and other enterprises in some border towns.

Maids in private households were the third most numerous single occupation, comprising 7 percent of all commuters. Most of them entered at El Paso or San Ysidro (near San Diego).

Among business occupations, sales clerks were most numerous by a considerable margin. Commuters in business occupations, as a group, comprised 8 percent of the total. Those in hotel and restaurant occupations accounted for 6 percent and those in building occupations another 6 percent. Other significant concentrations were metal workers (4 percent) and sewing-machine operators (3 percent).

SCOPE AND METHOD OF LAREDO SURVEY

In the course of the I&NS Census, information was obtained about the place of employment and occupation for each commuter. In Laredo, Texas, data were obtained for 2,669 commuters. Of these, 20 percent were employed as farmworkers and household domestics. Excluding these workers from the totals reduces the number of commuters to 2,121. A sample of 90 establishments in which 5 or more commuters had been employed at the time of the I&NS Census was selected. In addition, a subsample of eight gasoline service stations employing less than five commuters was surveyed. Of the 98 establishments, one refused to provide data, one was out of business, and a third could not be located. The other 95 all provided data about the wage rates paid to commuters and U.S. residents employed in the same occupations. In all, wage data were obtained for 1,075 residents and 608 commuters employed in 48 broad occupational groupings.

There were 25 occupations in which five or more commuters were employed. These accounted for 84 percent of the residents and 94 percent of the commuters in the sample.

EMPLOYMENT AND WAGE FINDINGS OF THE LAREDO STUDY

The 608 commuters employed in the 95 establishments covered by the survey constituted 28 percent of the 2,121 commuters reported by I&NS who were not farm laborers or household domestics.

Although 48 separate occupations were reported for the commuters in the survey, there was a concentration of workers employed as salesclerks, laborers, general clerks, warehousemen, salesmen, and truck drivers.

Average hourly earnings for the 25 surveyed occupations in which five or more commuters were employed ranged from $.81 for busboys and $.86 for service-station attendants to $2.10 for customs appraisers. (Table 5.)

Commuters and resident workers employed in the same establishment received identical wages in each occupational classification.

A wage of $1.40 per hour was the rate most commonly paid to surveyed commuters (Table 6). This rate was the Federal minimum in effect at the time of the survey and, of the 608 workers in the sample, 48 percent were being paid precisely this amount. Moreover, 76 percent (including some workers not covered by the Federal minimum wage law) were receiving $1.40 per hour or less. This would indicate that the ready availability of alien commuters serves to keep the level of wage rates closely tied to the minimum, where applicable, and even lower for workers not protected by law.

IMPACT ON COMMUTERS OF RESTRICTIVE ADMISSION STANDARDS

Various proposals have been made to restrict the admission of the commuters. During the 90th Congress, a bill (S. 2790) was introduced in the Senate which would permit a commuter to reenter the United States ". . . only if the Secretary of Labor has determined and certified to the Attorney General within six months prior to the date of admission that the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed. . . ." To implement this requirement, a test of adverse effect on wages would have to be specified.

TABLE 5.—AVERAGE HOURLY WAGE RATES AND PREVAILING WAGE RATES FOR SELECTED OCCUPATIONS IN WHICH COMMUTERS ARE EMPLOYED AND THE PROPORTIONS OF COMMUTERS PAID LESS THAN SPECIFIED AMOUNTS, LAREDO, TEX., JANUARY 1968

Occupation	Average hourly earnings [1] [2]	Prevailing wage rate [1] [3]	Percent and number of commuters earning less than—					
			Prevailing wage rate		$1.40 per hour		$1.60 per hour	
			Percent	Number	Percent	Number	Percent	Number
Total, specified occupations			14.0	175	24.8	311	80.0	1,001
Appraiser, custom	$2.10	$2.15	41.7	8	0	0	0	0
Bookkeeper	1.71	1.65	45.5	8	0	0	36.4	6
Busboy	.81	.70	0	0	100.0	17	100.0	17
Butcher	1.65	1.60	0	0	0	0	0	0
Cashier	1.33	1.40	0	0	0	0	100.0	63
Clerk, general	1.49	1.40	0	0	0	0	54.5	81
Clerk-typist	1.54	1.60	8.3	1	0	0	8.3	1
Clerk, receiving and shipping	1.40	1.40	0	0	0	0	100.0	16
Kitchen helper	1.09	.95	0	0	100.0	9	100.0	9
Laundry machine presser	1.13	1.25	42.9	7	100.0	16	100.0	16
Laborer	1.43	1.45	0	0	15.0	22	85.0	127
Material handler	1.49	1.40	0	0	0	0	72.7	15
Chambermaid	.95	.95	15.4	3	100.0	19	100.0	19
Machinist, shop	1.47	1.40	0	0	0	0	80.0	5
Sales clerk	1.36	1.40	11.5	32	11.5	32	97.2	270
Salesman	1.65	1.40	66.7	42	66.7	42	88.9	56
Secretary	1.71	1.55	45.5	26	0	0	54.5	32
Sewing machine operator	1.05	1.05	0	0	100.0	31	100.0	31
Service station attendant	.86	.70	0	0	85.0	25	100.0	30
Stenographer	1.47	1.40	0	0	0	0	66.7	4
Stockman	1.34	1.40	17.8	8	17.8	8	100.0	45
Tailor	1.59	1.35	9.1	2	72.7	16	81.8	18
Truckdriver	1.76	1.40	0	0	0	0	50.0	31
Waiter-waitress	.87	.70	0	0	100.0	52	100.0	52
Warehouseman	1.47	1.40	28.7	22	28.7	22	73.7	57

[1] Based on rates paid to both commuters and U.S. residents.

[2] The data were tabulated in 10-cent intervals and the average hourly earnings were computed on the basis of the midpoints of the wage intervals.

[3] The midpoint of the wage interval containing the largest number of workers, provided this interval comprised at least 30 percent of all workers in the sample employed in this occupation. If there is no such interval, then the midpoint of the interval containing the median is the prevailing wage rate.

Source: Wage survey conducted by the U.S. Department of Labor, January 1968.

For expository purposes, the following tests are considered in this paper:

1. Prevailing-rate concept—a commuter would be denied certification if he is employed in, or is seeking a job at, a wage rate less than that found to be prevailing in the occupation in the area of employment.
2. Adverse-effect wage rate concept—a commuter would be denied certification for employment at a wage rate below that specified by the Secretary of Labor, e.g., $1.40 per hour or $1.60 per hour.

In Table 5, estimates have been made of the percent and number of workers in principal occupations that would have been denied certification in January 1968 under the adverse-effect tests set forth above.

Only 14 percent of the commuters engaged in 25 occupations shown in Table 5 would have been refused readmission if the prevailing rate in each occupation were the standard for certification. But if the wage test for certification were an adverse-effect rate of $1.40 per hour, nearly 25 percent of the commuters in the 25 selected occupations would not have been permitted to enter the United States at the wage rates they were then receiving. Approximately 80 percent of them would have been denied certification if the wage standard had been $1.60 per hour. Table 6, which takes into account a broader range of occupations, shows 28 percent of the commuters earning less than $1.40 an hour and 80 percent under $1.60.

Excluded from Table 5 and Table 6 are the farmhands and household domestic workers. Because their wages are very low, almost all of them would have been denied admission under either the $1.40 or the $1.60 adverse-effect standard.

Because the Laredo survey was conducted in January 1968, the estimated impact on the commuter flow at the $1.60 rate is probably overstated. At the time of the survey, the FLSA minimum was $1.40 per hour. A substantial number of establishments included in the survey are covered by the Federal minimum wage law. Wage rates in these establishments were increased to no less than $1.60 on February 1, 1968, and commuters in their employ, therefore, would not be denied certification because of standard wage offers.

A City of Laredo ordinance, which became effective February 1, 1968, shortly after the Labor Department survey was made, provides a minimum wage of $1.00 and hour (to be raised to $1.15 an hour after September 1, 1969). Several categories of employees are exempt, however, most notably domestic servants and employees covered by the Fair Labor Standards Act. Less than 12 percent of the commuters in the 48 occupations surveyed by the Labor Department would have been affected by the $1.00-an-hour minimum.

TABLE 6.—PERCENTAGE DISTRIBUTION OF COMMUTERS[1] BY WAGE RATE, LAREDO, TEX., JANUARY 1968

Wage interval	Percent of total[2]	Cumulative percentage[2]
$0.70 and less	4.6	4.6
$0.71 to $0.80	1.1	5.7
$0.81 to $0.90	.2	5.9
$0.91 to $1.00	6.3	12.2
$1.01 to $1.10	5.0	17.2
$1.11 to $1.20	1.1	18.4
$1.21 to $1.30	3.9	22.3
$1.31 to $1.39	5.6	27.9
$1.40	47.7	75.6
$1.41 to $1.50	3.6	79.2
$1.51 to $1.59	.5	79.7
$1.60	7.9	87.6
$1.61 to $1.70	5.0	92.6
$1.71 to $1.80	1.3	93.9
$1.81 to $1.90	.3	94.2
$1.91 to $2.00	2.0	96.2
$2.01 to $2.10	.5	96.7
$2.11 to $2.20	.5	97.1
$2.21 to $2.30	.5	97.6
$2.31 to $2.40	.3	97.9
$2.41 to $2.50	.7	98.6
$2.51 to $2.60	.2	98.7
$2.61 to $2.70	.2	98.9
$2.71 to $2.80	0	98.9
$2.81 to $2.90	0	98.9
$2.91 to $3.00	.5	99.4
Over $3.00	.6	100.0

[1] Excludes farmworkers and maids in private households.
[2] Percent of all commuters in the 48 occupations covered by the survey.

Note: Due to rounding, percentages may not add to toals.

Source: Wage survey conducted by the U.S. Department of Labor, January 1968.

APPLICABILITY TO OTHER BORDER COMMUNITIES

The 2,669 daily commuters to Laredo constituted almost 11 percent of the total labor force in that area. By way of contrast, 7,535 commuters crossed daily through the San Ysidro border station into the San Diego area, but they were only 2 percent of the work force. Table 7 compares the commuters counted by I&NS at each of the major points of entry with employment in nearby U.S. border counties for time periods as comparable as possible to the time of the survey.

The employment of green-card commuters in the Laredo area is pervasive. They work in almost all establishments of any size, although they are concentrated in the relatively low-skilled jobs. In other border areas with a labor force comparable to Laredo's, commuter employment probably followed very much the same pattern. And even in a large area where the proportion of the labor force made up by commuters is relatively smaller, it is likely that, because of their concentration in unskilled jobs, the commuters considerably influence the wages and working conditions prevailing in certain occupations.

Another consideration is that the commuters who enter at such points as Calexico, San Luis, and Hidalgo are employed for the most part in agriculture. If an adverse-effect-rate standard of $1.40 or $1.60 per hour were established, then a significant number of the workers seeking admission to California would be denied certification, as would nearly all the commuters regularly employed in agriculture in Arizona, New Mexico, and Texas.

In summary, the estimates of impact on commuter admissions which would result from establishment of restrictive standards that were derived from the Laredo wage and employment data are probably generally applicable, with variations dependent on the occupational mix, to other border areas.

TABLE 7.—NUMBER OF COMMUTERS ADMITTED TO THE UNITED STATES BY MAJOR POINT OF ENTRY ALONG THE MEXICAN BORDER AND EMPLOYMENT IN SELECTED LABOR AREAS, 1967

Point of entry	Number of commuters admitted	U.S. border county	Employment in county				Commuters as percent of total work force
			Total	Agriculture	Nonagriculture	Date	
California:							
San Ysidro	7,535	San Diego	380,500	11,300	369,300	December	2
Calexico	7,690	Imperial	27,500	6,900	20,600	do	28
Arizona:							
San Luis	3,552	Yuma	24,800	9,100	15,700	[1]	14
Nogales	1,118	Santa Cruz	5,150	200	4,950	[1]	22
Naco	94	Cochise	18,150	2,200	15,950	[1]	3
Douglas	380						
Texas:							
El Paso [2]	11,760	El Paso	110,350	2,400	107,950	December	11
Fabens	279						
Del Rio	317	Val Verde	9,540	1,050	8,490	do	3
Eagle Pass	1,635	Maverick	6,655	975	5,680	do	24
Laredo	2,669	Webb	25,130	2,000	23,120	do	11
Roma	73	Hidalgo and Starr	57,040	9,430	47,610	do	2
Hidalgo	937						
Brownsville	1,917	Cameron	41,310	2,900	38,410	do	5

[1] Estimated annual average employment for 1967.

[2] Includes points of entry at Cordova (3,491 commuters) and Ysleta (423 commuters).

Source: I. & N.S. Commuter Census, November–December 1967, and State employment security agency reports.

[From Farm Labor Developments, U.S. Department of Labor, September–October, 1967]

CHARACTERISTICS OF MEXICAN IMMIGRANTS WORKING ON FARMS

The typical Mexican immigrant working in agriculture in the United States:
Is employed in California or Texas.
Is in his 30's or 40's.
Entered the country in the 1950's or early 1960's.

This profile was drawn from information on a sample of the cards aliens are required to file annually with the Immigration and Naturalization Service, showing current address, occupation, and other information. The sample included about 23,600 cards of Mexicans, 3.7 percent of the 631,000 Mexicans who filed alien address cards in 1965. Table I shows the distribution, by labor force status, of the Mexicans reporting in 1965, estimated on the basis of the sample.

Mexicans admitted as immigrants to the United States are commonly referred to, especially in the Southwestern States, as "green carders." They are so called because of the color of the Alien Registration Cards (Form I–151) issued to immigrant aliens of all nationalities. Few restrictions are placed on immigrant aliens after admission to the United States. They cannot vote or hold public office. Some States do not allow them to be licensed for certain occupations. Otherwise, they have much the same rights and obligations as United States citizens. They must pay taxes, are subject to the military draft, and may travel or live where they please. Some of the Mexicans, in fact, continue to live in Mexico and migrate seasonally to the United States or commute daily to jobs in border areas like the Rio Grande and Imperial Valleys. Some eventually become United States citizens; others remain indefinitely in the United States without becoming citizens.

TABLE 1.—DISTRIBUTION, BY LABOR FORCE STATUS, OF MEXICANS FILING ALIEN ADDRESS CARDS IN 1965

Labor force status	Number	Percent
Total	631,100	100.0
Occupations reported, total	282,800	44.8
Farmers and farm managers	4,400	.7
Farm laborers and foremen	34,700	5.5
Professional, technical, and kindred workers	7,600	1.2
Managers, officials, and proprietors	4,400	.7
Clerical and kindred workers	8,200	1.3
Salesworkers	5,100	.8
Craftsmen, foremen, and kindred workers	28,400	4.5
Operatives and kindred workers	40,400	6.4
Private household workers	14,500	2.3
Service workers	25,900	4.1
Laborers except farm and mine	109,200	17.3
Housewives	152,100	24.1
Retired	41,000	6.5
Students	36,600	5.8
Unemployed	3,200	.5
Under 14 years old	59,300	9.4
Unknown (no entry on card)	56,200	8.9

Although they have received more publicity than other occupational categories of green carders, farmworkers make up only a small fraction of the total. Only 5.5 percent of the Mexicans in the sample entered their occupations as farm laborers or foremen and another 0.7 percent as farmers or farm managers. Expansion of the sample data indicates some 39,000 green carders in agricultural occupations. However, this is undoubtedly a minimum figure, comprising those Mexicans who considered themselves full-time farmworkers. It is most unlikely that it includes all Mexican immigrants who engage in farmwork at one time or another during the year. Some of the more than 100,000 workers who designated themselves as general laborers probably do farmwork at least occasionally. Some of those listing themselves as housewives, students, or unemployed may work on farms during periods of peak seasonal activity. Finally, some of the sizable group of "unknowns," those who left blank the occupational designation on the card, are probably farmworkers.

Based on the sample for all nationalities combined, 57,500 alien immigrants reported agricultural occupations in 1965. The 39,100 Mexicans made up more than two-thirds of this total. There were 3,650 Canadians, 1,200 Germans, and 1,000 Poles. Japanese and Filipinos probably accounted for most of the remainder, although a breakout of data for these nationalities is not available.

Immigrant aliens with visas to reside permanently in the United States should not be confused with Mexicans admitted for temporary employment in agriculture. The latter, usually called "braceros," are under contract and may not be employed for more than 120 days. They were formerly admitted under Public Law 78 which expired at the end of 1964. A few thousand braceros were brought in under the Immigration and Nationality Act in 1965 and 1966 but the importation was on a far smaller scale than under Public Law 78. The end of Public Law 78 made farmwork in California (by far the largest bracero-using State) more attractive to domestic workers and caused larger numbers of them, including green carders, to take farm jobs.

STATE OF RESIDENCE

Approximately 60 percent of the agricultural green carders were in California, and another 25 percent were in Texas. Arizona and New Mexico were the only other States with significant concentrations of green carders. The table below shows the total number of Mexicans filing alien address cards in these States in 1965, and the number and percent reporting agricultural occupations:

State	Total reporting under alien address program [1]	In agriculture	
		Number	Percent
Arizona	30,700	2,600	8.5
California	315,500	24,100	7.6
New Mexico	12,200	1,650	13.5
Texas	201,400	10,000	5.0
Other States	71,200	750	1.0
Total	631,000	39,100	6.2

[1] Source: Annual Report of the Immigration and Naturalization Service, 1965.

The 24,000 green-card farmworkers in California comprised only 20 percent of the State's seasonal hired farmworkers (annual average in 1965). The corresponding portion in Texas was slightly less than 10 percent. As previously noted, however, these proportions may be augmented at certain seasons of the year by people who occasionally do farmwork, such as some of the general laborers, housewives, students, and "unknowns."

YEAR OF ENTRY

Most of the Mexican aliens who reported agricultural occupations in 1965 were relative newcomers. The year of entry for 35 percent of them was in the period of 1961 through 1964. This was a higher proportion than for any other occupational category. Other unskilled categories had the next highest proportions of entrants during this period: Private household workers, 32 percent; general laborers, 25 percent; and service workers, 23 percent. These proportions tend to support the thesis that newly arrived immigrants start in unskilled jobs and move up to more skilled jobs as they acquire work experience and language proficiency.

For another 38 percent of the Mexicans in agricultural occupations, the year of entry was in the decade 1951–60. Thus, about 28,600 green-carder farmworkers, nearly three-fourths of the total, entered the United States after 1950.

Only a trickle of green carders, 4 percent of the total, came to the United States to work in agriculture during the war years and the immediate postwar period, 1941–50. Still fewer, 1 percent of the total, came during the years of economic depression, 1931–40. Eight percent of the registrants reported a year of entry in the 1921–30 decade and another 11 percent in the 1911–20 decade. Only 3 percent of them entered before 1911. The table below shows the number of entrants for work in agriculture and the annual averages during these periods:

Period	Total	Annual average
1961–64	13,700	3,425
1951–60	14,900	1,490
1941–50	1,500	150
1931–40	400	40
1921–30	3,100	310
1911–20	4,300	430
Before 1911	1,200	
Total	39,100	

Although survey data are not available for years since 1964, information from other sources shows very few Mexican immigrants have been admitted for agricultural work since Immigration and Nationality Act amendments became effective in December 1965. The amendments require aliens seeking to immigrate to the United States for employment to obtain a certification from the Secretary of Labor to the Secretary of State and to the Attorney General that:

"(A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

Under these criteria, less than 100 Mexicans have been permitted to immigrate for farm jobs, mostly as foremen or machinery operators. There may be a few additional farmworkers among Mexicans who did not enter under the employment certification procedure but were admitted on other grounds, e.g., as spouses of United States citizens or aliens previously admitted for permanent residence. They are allowed to work but the number taking jobs in agriculture is not likely to be large.

Even before the amendments to the Immigration and Nationality Act, the Department of Labor had taken action to reduce the number of new Mexican immigrants. Beginning July 1, 1963, the State Department informed the Labor Department of every individual visa request by prospective immigrants who intended to work in the United States. Between that time and December 1965, when the new Immigration and Nationality Act amendments became effective, entry of prospective Mexican immigrants (with some exceptions) was precluded if the Department of Labor certified that workers were available in the United States or that such workers would be adversely affected by admission of the Mexican immigrants. During these 2½ years, 23,010 prospective entrants for farmwork were examined, and only 2,518 were admitted. The impact of this policy is shown by a comparison of admission figures for the fiscal years immediately before and after the effective date of the policy, July 1, 1963. Admissions of Mexican immigrants with reported occupations dropped from 23,643 to 8,655. The number decreased sharply in all occupational groups, but a drop from 6,797 to 1,748 in the farm laborers and foremen category was the greatest decline.

SEX AND AGE

Only 6 percent, or 2,400, of the workers were women. As previously noted, some of the 152,000 women who registered as housewives may do farmwork during periods of peak seasonal activity. The women farmworkers tended to be younger than men. More than three-fifths of them listed their ages as 40 years or under, compared with two-fifths of the men.

The age distribution of the green carders in agriculture indicates a decrease in their number over the next few years. Only one of six was less than 30 years old at the time of the 1965 registration while two of six were over 50:

Age group	Number	Percent
Under 21	800	2
21 to 30	5,500	14
31 to 40	10,200	26
41 to 50	9,400	24
51 to 60	6,200	16
Over 60	7,000	18
Total	39,100	100

The current policy severely restricting admission of immigrants for agricultural work prevents an influx of young workers from Mexico. At the same time, the ranks of the middle-aged and elderly farmworkers will be thinned not only by retirement and death, but also by the tendency of the immigrants to move from agricultural to nonagricultural work. The result should be a net decrease in the number of green carders in agriculture.

Source Note: This article was prepared by James C. Nix, labor economist, Office of Farm Labor Service, Bureau of Employment Security. The Immigration and Naturalization Service cooperated by selecting the sample of alien address cards, coding for machine tabulation the information on the cards, and reviewing the final report.

UNITED STATES COMMISSION ON CIVIL RIGHTS

STAFF REPORT

THE COMMUTER ON THE UNITED STATES-MEXICO BORDER

INTRODUCTION

One of the most commonly voiced concerns of the Mexican American community in the border area is with the commuter, the Mexican alien who resides in Mexico and commutes to work across the border in the United States, 1/ forcing domestic workers to compete for wages with workers living in a much lower cost economy. Commuters represent a supply of workers in excess of the demand who depress the wage rate, displace the domestic worker, and lower his living standard. The commuter poses an even greater threat to the economic well being of the domestic worker when he serves as a strike-breaker, as he has done in Starr County, Texas and Delano, California, thus stifling the organizing and collective bargaining efforts of the American laborer. 2/

As viewed in the 1968 Report of the Senate Migratory Labor Subcommittee, The Migratory Farm Labor Problem in the United States, "(t)he problems created by the commuter are manifest":

> The Mexican aliens, as a group, are a readily available, low-wage work force which undermines the standards American workers generally enjoy throughout the rest of the country. More importantly, the normal play of free enterprise principles is subverted and prevented from operating to develop standards along the border comensurate with the American standard. So long as Mexican aliens are allowed indiscriminately to work in the American economy, and take their wages back to the low-cost Mexican economy, the growth of the American standards will continue to be stultified. 3/

1/ There is also, but to a smaller extent, commuter traffic across the American-Canadian border. Canadian commuters do not depress local economic conditions, as do Mexican commuters, because they live in a substantially identical cost-of-living economy, work in highly unionized occupations and are highly unionized themselves. Being well assimilated into the labor force, they offer no undue competition to American labor.

2/ See p. 17 infra.

3/ Senate Migratory Labor Subcommittee, The Migratory Farm Labor Problem in the United States, S. Doc. No. 1006, 90th Cong., 2d Sess. 45 (1968).

WHAT IS A COMMUTER?

The term "commuter" is taken by most residents of the border area to refer to all persons who travel to their work on the American side of the border from their place of actual residence in Mexico, whether they commute daily or on a less frequent basis. Several classes of persons commute to work across the border, including American citizens living in Mexico and Mexican citizens with temporary visas (commonly referred to as "white carders"). The latter group acquires employment here in violation of their limited status. In its strict legal sense (and as it will be used here) the term "commuter" is limited to immigrants lawfully admitted for permanent residence and gainfully employed here, but who retain actual residence in Mexico (sometimes referred to as "green carders", although, in fact, all immigrants, whether or not "commuters" are issued "green cards").

There is wide disagreement about the actual extent of the commuter traffic. The Immigration and Naturalization Service conducted a survey on January 11 and 17, 1966, finding a total of 43,687 commuters. The United Farm Workers Organizing Committee, AFL-CIO, on the other hand, has estimated the number to be closer to 150,000. While the former estimate includes only daily commuters working along the border, the latter includes aliens remaining here for periods of weeks or months, usually working in areas farther North.

The commuter should not be confused with the non-immigrant Mexican contract laborer previously brought in for seasonal employment under Public Law 78 (known as the "bracero" program) and recently brought in under section 101(a)(15)(H) of the Immigration and Nationality Act of 1952. The bracero program was originally established during World War II to augment the American labor shortage. Thereafter, Congress continually extended it (even when there was domestic unemployment) under pressure from an agri-business which had to come to assume a vested interest in this cheap labor supply.

In 1964, after the national conscience took stock of the rising rate of agricultural unemployment, the increasing of discrepancy between farm labor wage rates and those for comparable work, and the worsening conditions in migrant labor camps, Public Law 78 was terminated. [4] The effect of this termination was softened by the admission of a decreasing number of contract laborers under the above mentioned provisions of the Immigration and Nationality Act. During the last year of the bracero program 177,736 Mexican laborers were admitted; in 1965, under the new procedure, the number was reduced to 20,286. In 1966 the number decreased to 8,647 and in 1967 to 7,703. The year 1968 was the first year in which there was no admission of contract laborers and marks the final phasing-out of the contract labor program.

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[4] Report from the Secretary of Labor, Year of Transition -- Seasonal Farm Labor 2 (1965).

Like all persons immigrating to the United States, the commuter must apply for and obtain the status of a permanent resident alien and receive an alien registration card (Form 1-151, commonly referred to as a "green card") as evidence of his lawful admission. Under section 212(a)(14) of the Act, in order to qualify for employment in the United States, the applicant must secure certification from the Secretary of Labor to the effect that:

> there are not sufficient workers in the United States who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.5/

Under the present Immigration and Naturalization Service (hereinafter "Service") interpretation and enforcement of this section, compliance with this provision need only be made at the time of the commuter's original entry. Once his status is secured he may enter and leave the country at will, working wherever he pleases, regardless of the effect he might have on domestic working conditions. 6/

A 1967 amendment to the regulations 7/ bars the employment of green card holders (commuters and residents) at locations where a

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5/ Immigration and Nationality Act, §212(a)(14), 8 U.S.C. §1182.

6/ See discussion of Amalgamated Meet Cutters case p. 9 *infra*.

7/ Title 8, §211(b).

labor dispute has been certified by the Secretary of Labor. On July 10 and 27, 1967, some 16 work stoppages were certified in Rio Grande Valley of Texas, El Paso, Texas and in Southern California, with the effect of preventing commuters from accepting employment at the struck concerns. Even commuters who have secured their immigrant status are covered by the section. A major exception exists, however, with regard to workers already employed at the struck concern at the time of certification. This exception renders the regulation somewhat ineffective in preventing commuters from working as strikebreakers since an employer usually has ample time after a labor dispute occurs to hire needed alien employees before the dispute is certified. This problem could be met if the regulation were modified so as to exclude all green carders not employed at the time that the dispute began.

Once admitted, a commuter is entitled to most of the rights and privileges of an ordinary citizen except the right to vote and hold public office. Unlike most of the more than 650,000 Mexican aliens currently possessing green cards, commuters are not seeking eventual citizenship. Instead they look upon their green cards as nothing more than work permits. In fact, by law commuters cannot claim naturalization benefits; it has been held that actual domicile here is a prerequisite to naturalized citizenship. 8/

LEGAL BACKGROUND OF AND LEGAL CHALLENGES TO THE COMMUTER SYSTEM

The commuter system has deep roots. People have commuted to work across the United States-Mexico border since the border's inception. Up until the 1920s this traffic was unrestricted. In 1924 a quota system was established which, while not restricting Mexicans directly, required Mexican immigrants to present immigrant visas for entry. 9/ An exception to the Act's definition of the term "immigrant" ("any alien departing from any place outside the United States destined for the United States" 10/) was made for "an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure". 11/ At first commuters were considered as being here

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8/ Petition of Wright, 42 F. Supp. 306 (1941); In re Barron, 26 F.2d 106 (1928); Petition of Correa, 79 F.Supp. 265 (1948).

9/ Immigration Act of 1924, Ch. 90, 43 Stat.§153.

10/ Id. §3.

11/ Id. §3(2).

"temporarily for business" and deemed not to be immigrants and, hence, were allowed to continue their employment pattern unrestricted. In 1927 immigration authorities reversed this position and classified commuters as immigrants. 12/

Two commuters contested this new classification and the Supreme Court, finding that one of the "great purposes" of immigration legislation "was to protect American labor against the influx of foreign labor", held unanimously that the term "business" was not meant to include everyday employment. The commuter was not to be exempt from the immigrant status. 13/

The Immigration authorities, however, saw their duty as the protection of diplomatic relations between the United States and Mexico rather than the protection of American labor. In a paper by the Immigration and Naturalization Service prepared for the Select Commission on Western Hemisphere Immigration, the Service stated:

> In studying the problem (status of the commuter) at that time, the immigration authorities concluded that Congress had not intended to interfere with the established pattern of regular border crossings by workers from Mexico or Canada who commuted to jobs in the United States. While such aliens could obtain immigrant visas without difficulty, they would be faced with an impossible task if they were required to obtain a new visa for each daily reentry. Consequently, the immigration authorities devised a border crossing identification card which could be used by aliens who frequently cross the international boundary. The issuance and use of such border crossing cards received express sanction

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12/ General Order 86 of Apr. 1, 1927.

13/ Karnuth v. United States ex rel. Albro, 279 U.S. 229, 243, 244, (1929).

> by the Congress in the Alien Registration Act of 1940.
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> Thus a commuter was able to procure an immigrant visa and subsequent lawful admission as an immigrant. Thereafter he would obtain a border crossing identification card, and with that card he could enter each day to go to his job as returning to his immigrant status in the United States. This arrangement was in harmony with the established good-neighbor policy with Mexico and Canada, facilitated travel across the Mexican and Canadian borders, and avoided serious dislocations in the border areas. 14/

Actually, the commuter system is without express statutory basis. In fact the term "commuter" is not to be found in the Act. Its special character has been described by the Board of Immigration Appeals in the following way:

> The commuter situation manifestly does not fit into any precise category found in the immigration statutes. The status is an artificial one, predicated upon good international relations maintained and cherished between friendly neighbors. 15/

In Gordon & Rosenfield, Immigration Law and Procedure, (1959) this description is found:

> Where this employment (of Canadians and Mexicans) is permanent in character administrative ingenuity has devised a "commuter" status, which enables the Canadian or Mexican to obtain lawful admission for permanent residence in order that he may be able to pursue his employment here, and his right to enter each day is attested by his alien registration receipt card. *Of course, this device is an amiable fiction*. . . . 16/
> (Emphasis added.)

14/ Report of the Select Commission on Western Hemisphere Immigration Commuters, Historical Background, Legal Challenges, and Issues 101 (1968).

15/ Matter of M.D.S., 7 Immigration and Naturalization Dec. 209 (1958).

16/ Gordon and Rosenfield, Immigration Law and Procedure 127 (1959).

Due to the absence of statutory foundation, immigration authorities have attempted to justify the commuter program's existence by its long-standing history, the fact that the program has long been well known to Congress and the fact that it was discussed and impliedly endorsed by the Senate Judiciary Committee study preceding the passage of the Act of 1952. "Nothing in the Immigration and Nationality Act of its legislative antecedents indicated that the Congress was dissatisfied with the commuter program or desired to change it in any way". 17/ The continuation of the commuter program after the 1952 Act was endorsed by the Board of Immigration Appeals in the Matter of H. O, 5 I. & N., Dec. 716, 1954.

It also has been argued that the structure of the statutory and regulatory provisions facilitating re-entry supports the commuter program. Section 211(b) of the Act provides that

> . . . under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 101(a)(27)(B) . . . may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigration visa, reentry permit or other documents.

A "returning resident immigrant" is defined by the statutory definition alluded to as "an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad." In turn, section 101 (a) (20) defines the term "lawfully admitted for permanent residence" as ". . . the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed". As pointed out by L. Paul Winings, past General Counsel for the Immigration and Naturalization Service, in defining the term "lawfully admitted for permanent residence", the Act

> . . . does not say one who has been admitted for permanent residence and has established such residence in the United States. What it says is that it is the status of having been accorded the privilege of permanent residence. In other words, I have paid my way into the ballpark; if I want to go out temporarily, I can come back in. 18/

17/ See n. 15 supra, at 102.

18/ House Judiciary Committee, Study of Population and Immigration, Administrative Presentations (III), Admission of Aliens into the United States for Temporary Employment and "Commuter Workers" 167 (1963).

The regulation promulgated persuant to section 211(b), however, does not provide for the re-entry of persons "lawfully admitted for permanent residence" as that term is defined by the Act. Instead it says:

> In lieu of an immigrant visa, an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year may present Form I-151, Alien Registration Receipt Card, duly issued to him . . . 19/ (Emphasis added.)

Although the immigration authorities take the position that this section was not meant to be exclusive, a strong argument can be made that by its wording it in fact excludes commuters. As one commentator has noted, a commuter "is not returning to an unrelinquished, lawful, permanent residence after a temporary absence not exceeding one year because his residence is not in the United States and as a rule he ha/s/ maintained . . . residence in a foreign country for a period exceeding one year." 20/

In Amalgamated Meat Cutters v. Rogers,21/ a case involving the Service's interpretation and enforcement of aforementioned section 212(a)(14) of the Act (precluding admission of aliens for skilled or unskilled labor when the Secretary of Labor certifies that such admission would adversely affect American labor), doubt was cast upon the Service's position. That case involved a strike situation where a certification had been made. In response, the Service instructed the authorities at the relevant points of entry that during the effectiveness of the certification no aliens applying for admission and destined for employment at the struck operation, "except returning lawfully domiciled resident aliens", should be admitted.

The Service took the position that commuters are "aliens lawfully admitted for permanent residence". The Court disagreed - "It is clear that Mexican commuters do not reside in the United States, and that it therefore is not possible for them to be aliens

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19/ 8 CER. 211.1 (6).

20/ Newman, The Legality of the "Commuters" or "Green Card Holders" Working in the United States, in Cabinet Committee Hearings on Mexican American Affairs 63 (1968).

21/ 186 F.Supp. 114 (D.C. D. C.) (1960).

lawfully admitted for permanent residence." Any other construction, the Court felt, would " . . . make shambles of a provision which . . ." was designed to " . . . assure strong safeguards for American labor". 22/ The suit had become moot by the time that final judgment was entered, and hence was not appealed by the Service. "However, the administrative authorities do not believe (the decision) is correct and do not follow it". 23/

The rationale in the Amalgamated Meat Cutters decision is equally relevant to the validity of the whole commuter system and, logically, should compel a conclusion contrary to that taken by the Service. The Court by way of obiter dictum, however, expressly limited its holding in this respect:

> This should not mean, however, that Mexicans or Canadians cannot commute to work in the United States. The defendants can utilize the documentary requirements and administrative procedures they think best under the applicable law for aliens who work in this country and live in Mexico or Canada. If the defendants are satisfied that an alien can enter the United States to work here, they could then permit the alien to commute. But when the Secretary of Labor has issued a certification under §212(a)(14) pertaining to particular employment, such as an alien would be excludable. It is not sufficient to resort to an "amiable fiction" to justify a wholesale evasion of the Secretary's certification -- Mexican commuters destined for the employment covered by the certification must be excluded just as any other Mexican non-resident alien. 24/

The commuter program was squarely attacked in a 1964 case, Texas State AFL-CIO v. Kennedy, 25/ where workers from the Texas border area, alleging economic detriment, sued the immigration authorities for injunctive relief against continuation of the commuter system. The Court avoided reaching the merits by dismissing the action on the grounds that the plaintiffs lacked standing to sue. Since 1964 the law of standing has changed readically, 26/ and a similar suit has recently been brought by California Rural Legal Assistance in behalf of California farm workers displaced by commuters taking temporary

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22/ Id. at 119.

23/ Immigration and Nationality Act, with Amendments and Notes on Related Laws 231 (5th ed. 1966).

24/ See n. 21 supra, at 119.

25/ 330 F.2d 217 (C.A. D.C. 1964).

26/ See Flast v. Cohen, 392 U.S. 83 (1968), overruling the 45 year old barrier to standing, Frothingham v. Mellon, 262 U.S. 447 (1923), and repudiating its doctrine of judicial restraint in this area.

employment in California and freely returning to Mexico for a period of weeks or months. 27/ The complaint seeks an order requiring immigration officials to deny admission to "returning resident immigrants" who fail to demonstrate a bona fide permanent residence in the United States (e.g., commuters). "In determining the question of bona fide permanent residence . . .", the plaintiffs suggest the following indicia might be considered:

1. Possession of a U.S. Selective Service classification card in the alien's name, reflecting a United States address.

2. Possession of state and federal income tax returns in the alien's name, showing residence in the United States.

3. A driver's license in the alien's name issued by a State of the United States, reflecting a United States residence.

4. A vehicle registration in the alien's name reflecting a United States residence.

5. If the alien is married, the fact that both wife and children reside in the United States.

6. Evidence that his children attend school in the United States, or that a child was born in the United States.

7. Evidence of active membership in clubs, associations or unions organized or incorporated in the United States.

8. Convincing evidence of permanent employment in the United States.

9. Rent receipts, other than from a labor camp, hotel or motel, tending to evidence permanent residence in the United States.

10. Place of employment, occupation and length of employment. 28/

27/ Gooch, *et al*. v. Clark, *et al.*, Civil No. 49500 (N. D. Cal., 1968).

28/ Brief for Plaintiff at 10, Gooch, *et al*. v. Clarke *et al*., n. 28, *supra*.

Although the Service deems the commuter status to be consistent with the letter and intent of the Immigration and Nationality Act of 1952, it has been held that a commuter cannot even become a citizen (the assumed purpose for immigration under the Act) because, by definition, his assimilated status does not conform to the standard of residency (actual domicile in the United States) required by the Act for naturalization. 29/

Similarly, although a commuter must notify his Selective Service board of his current address, 30/ he is not actually subject to be drafted since he is not a resident of the United States under current Selective Service regulations 31/ because he did not reside in the United States for the required three month period.

Commuters also are treated differently from other "immigrants" with regard to Federal income tax status. An alien who has established residence in the United States is liable for Federal income tax on his entire income, from sources both within and without the United States. Whether an alien is a resident depends on the facts and circumstances of each case. The type of visa issued is only one of the elements considered. In response to an inquiry on this matter from the House Judiciary Committee, the Internal Revenue Service had this to say about commuters:

> It appears from the information submitted that the aliens about whom you are inquiring have never established a residence in the United States, but have obtained permanent visas merely to facilitate their entry into and departure from this country. Under such circumstances, the status of these individuals is that of nonresident aliens. 32/

29/ *See* n. 9, *supra.*

30/ *See* § 35 of the Alien Registration Act of 1940, as amended, and regulations issued thereunder.

31/ 32 C.F.R. 611.13(a)(6), 611.13(b)(7),(1944).

32/ *See* n. 19 *supra*, at 170.

Hence commuters, unlike other green card holders, are not subject to Federal income tax on income from sources outside this country.

THE IMPACT OF COMMUTER TRAFFIC

Much of the border area has relatively large labor surpluses, partly because of the large number of low skilled U.S. citizens and resident aliens residing in the area. 33/ Commuters, however, make up a significant part of the work force in many of the border communities. Although accurate statistics are not kept by the Immigration and Naturalization authorities, sample counts of the number of commuters crossing the border are taken from time to time. One such count, taken on January 11, 1966, showed that 42,641 commuters, of which 17,653 were employed in agriculture, entered the United States. The impact of these commuters on the labor market has been enormous. It has been estimated that over 17% of the labor market in El Paso, Texas, are commuters. Further estimates have shown that 5% of the San Diego, California, labor market and 23% of the Brownsville, Texas, labor market are commuters. Their presence can be directly related to high unemployment rates in these areas. 34/

Many people have commented on the impact of the commuter traffic in the border area. Senator Edward Kennedy of Massachusetts, speaking on a proposed amendment to Section 212 of Immigration and Nationality Act, said:

> In El Paso, where unemployment is currently some 35 percent greater than the State average, the estimated number of commuters in 1966 was more than double the number of unemployed. In El Centro, California, where the unemployment rate is currently 13.1 percent, the estimated number of commuters in 1966 was nearly double the number of unemployed. 35/

33/ Report of the Select Commission on Western Hemisphere Immigration, The "Commuter Problem" and Low Wages and Unemployment in American Cities on the Mexican Border 116 (1968).

34/ Moore, Mexican-Americans: Problems and Prospects 12 (1967).

35/ 133 Cong. Rec. 205 §14 (daily ed. Dec. 14, 1967).

A report by the Social Action Commission of the Catholic Diocese of El Paso indicated that one of the reasons for the low wages in El Paso is because " . . . the Mexican American must compete with some 25,000 workers from Mexico . . . legal alien commuters, U.S. citizens, and illegal entrants . . . who daily cross the bridge from Juarez to work in El Paso. Generally speaking, the workers from Mexico find no inconvenience in working for the barest of wages in El Paso." 36/

The employment of commuters in areas of high unemployment is a characteristic of the communities along the border area. Data published by the Texas Employment Commission in 1966, shows that the unemployment rate in the border towns on that date was substantially greater than in the interior cities. (See Table I) Laredo had the highest rate - 9.6%. The average rate for the four border areas (Brownsville-Harlingen-San Benito; El Paso; Laredo; and McAllen-Pharr-Edinburg) was 6.6%, compared with the 3.4 percent rate for the other 18 interior areas for which data was given. 37/

In a special survey held in Laredo by the Department of Labor during the summer of 1961, when the unemployment rate was 11.3%, the Department reported that a large number of unemployed American workers had the same occupational skills as the employed alien commuters.

36/ Catholic Conference Office of Immigration (Oct. 11, 1968). Organized labor also has shown concern. The following resolution was passed by the Texas AFL-CIO in Jan. 1968:

> . . . (T)housands of commuter aliens who cross the border daily to work, cause the unemployment of American citizens and create unfair competition in the labor market by working for sub-standard wages and then returning to Mexico at night where their living costs are much lower.

37/ These unemployment rates, supplied by the Texas Employment Commission, are somewhat conservative since they are based upon the number of persons registered with the T.E.C. offices. Many farm workers secure employment through the crew leader and never register with the T.E.C.

Table I

Unemployment Rates in 22 Texas Cities
1966

City	Rate	Rank
4 Border Cities	6.6	---
Brownsville-Harlingen-San Benito	6.5	21
El Paso	4.4	17
Laredo	9.6	22
McAllen-Pharr-Edinburg	5.8	20
18 Interior Cities	3.4	---
Abilene	3.6	11
Amarillo	2.9	4
Austin	2.6	3
Beaumont-Port Arthur-Orange	4.0	15
Corpus Christi	3.7	12
Dallas	2.5	2
Fort Worth	2.9	4
Galveston-Texas City	4.7	19
Houston	2.4	1
Longview-Kilgore-Gladewater	3.3	8
Lubbock	3.8	13
Midland-Odessa	3.4	9
San Angelo	3.4	9
San Antonio	4.3	16
Texarkana	3.8	13
Tyler	3.3	7
Waco	4.4	17
Wichita Falls	3.0	6

SOURCE: The Texas Labor Market, Texas Employment Commission.

While two garment manufacturers employed 88 commuters as sewing machine operators, the Texas Employment Commission office had on file applications from 156 unemployed U.S. workers qualified for that position. 38/ The survey showed that commuters were not limited to the garment industry, but were employed in hotels, restaurants, the retail trades and service establishments. The survey included a sample of firms employing 3,000 workers.

> (T)hese firms employed 438 Mexican aliens identifiable as commuters. In addition, the survey team suspected that other alien employees of these firms were commuters, although they had given U.S. addresses to their employers. 39/

The survey also included data on 19 occupational areas:

> (T)he firms employing only domestic workers paid higher rates for 15 occupations; in one occupation the rates paid were the same; and for three occupations the firms employing alien commuters paid higher rates. There were also instances where the same firms paid its alien commuters less than it paid U.S. workers for the same work. The average of the wage rates for these 19 occupation areas paid by the firms employing only U.S. workers was 38 percent higher than the average rates paid by the firms employing alien commuters. 40/ (See Table II)

United States Commission on Civil Rights field investigations in Laredo showed similar discrepancies in the trucking industry. For instance it was reported that Brown Express Lines, which hires few commuters, pays drivers $3.39 an hour; Alamo Express Lines, employing proportionately more commuters, pays $1.85 an hour. 41/

38/ *See* n. 34 at 120.

39/ *Id.* at 120.

40/ *Id.* at 121.

41/ Interview with Mr. David Jacobs, AFL-CIO, in Laredo, Texas, Sept. 10, 1968.

Table II Occupational Wage Structure
Laredo, Texas, June, 1961

Industry & Occupation	Average wage rate	
	Firms employing only domestic workers	Firms employing domestic & alien commuter workers
Hotels & motels		
Cook	$58 per week	$34 per week
Maid	20 " "	17 " "
Hall boy	25 " "	20 " "
Waiter	15 " ", plus tips	18 " ", plus tips
Busboy	25 " ", plus tips	13 " "
Bartender	58 " "	46 " "
Bellboy	15 " ", plus tips	16 " ", plus tips
Drugstores & related firms		
Cashier	$27 " "	$12 " "
Stock clerk	52 " "	40 " "
Fountain girl	16 " "	23 " ", + $3 meal allowance
Drug clerk	77 " "	55 per week
Grocery & related firms		
Cashier	$24 " "	$24 " "
Stock boy	35 " "	20 " "
Produceman	45 " "	35 " "
Butcher	65 " "	52 " "
Warehouseman	37 " "	31 " "
Misc. retail firms		
Porter	$53 " "	$35 " "
Warehouseman	73 " "	21 " "
Stockman	53 " "	45 " "

Technical Note: Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported; these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed for the few occupations where data were reported for each worker.

The pattern of commuter involvement in the Laredo labor market is found elsewhere with comparable effects. As in Laredo, a survey was conducted by the Department of Labor in El Paso, Texas, during the summer of 1961. About 1,000 commuters were employed in the 75 firms surveyed. It was noted, however, that " . . . these figures might be more because one firm indicated that it did not employ commuters but sent a bus to the border each day to pick up workers." 42/ The average wage in manufacturing in El Paso is extremely low. That city ranked lowest of the eight major Texas areas for which the Texas Employment Commission supplied data. (See Table III)

In El Paso, nondurable goods employment is heavily concentrated in garment manufacturing -- almost 75% of all nondurable goods workers are in this industry. The wage rate in garment manufacturing is little more than the minimum required by the Fair Labor Standards Act. Large numbers of commuters (mainly women) are employed in this occupation. Many people believe that the presence here of the garment industry, a recent phenomenon, is due to the large supply of labor and low wages -- both conditions owing, in part, to the commuter program. 43/ The El Paso survey concluded by showing that out of 11 construction firms 5 employed commuters; out of 4 retail dry goods firms, 3 employed commuters; out of 4 wholesale and warehouse firms, 3 employed commuters. In all these cases the firms employing commuters paid the lowest wages. 44/

The impact of the commuter is particularly acute in agriculture where mechanization is rapidly reducing job opportunities. Due to the high concentration of farms along the border and the fact that commuters often work in the lowest skilled, lowest paid jobs, farm workers, who are already underpaid, are the first to suffer competition from the commuter. Furthermore, the use of commuters as strike breakers (see discussion on page 17, infra) is especially damaging to this group's organizational struggles.

The wages paid farm workers in the border area are substantially lower than in interior regions. In the Rio Grande Valley, where 37% of the alien commuters worked on farm jobs, the 1966 wage rate was $.75 per hour, 31% less than the $1.10 average in the rest of the state. 45/ Similarly, California farm rates are the lowest in the border areas where the bulk of the farm labor force is composed of commuters. The commuter's impact is also reflected in the

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42/ See n. 34 at 121.

43/ Id. at 120.

44/ Id. at 122.

45/ Id. at 119.

Table III. Average Hourly Earnings in Manufacturing Industries

Eight Major Texas Cities
1966

	Average Hourly Earnings		
	All Manufacturing	Durable Goods	Nondurable Goods
Texas	$2.57	$2.62	$2.52
El Paso	1.90	2.46	1.72
Austin	1.98	1.71	2.26
Beaumont	3.35	3.03	3.48
Corpus Christi	2.96	2.57	3.26
Dallas	2.37	2.52	2.10
Fort Worth	2.81	2.97	2.39
Houston	3.00	2.87	3.16
San Antonio	1.98	1.92	2.02

SOURCE: The Texas Labor Market, Texas Employment Commission.

agricultural unemployment rate. For example, "commuters constitute about 85% of the farmwork force in California's Imperial Valley, where unemployment in 1966 was 10% of the labor force, twice the average for the entire state." 46/

EMPLOYMENT OF ILLEGAL ENTRANTS AND WHITE CARDERS

It is important to note the role of illegal entrants and white carders (see discussion on page 2, infra) in the employment picture in the border area. During 1967 the Border Patrol apprehended 86,845 deportable Mexicans working illegally, many in the border area. Of this number 27,830 were working in agriculture, 5,906 in trades, crafts and industry, and 53,109 in other occupations. 47/

The border crossing statistics kept are inadequate to accurately gauge the extent of white card employment. There are approximately 1,250,000 current white cared holders, and about 450,000 new white cards are issued annually. In 1968 there were 25,000 white carders who were deported, most of these for illegal employment. 48/ But it is felt by many residents of the border area that deportation figures do not fairly represent the number of white carders actually employed. 49/

46/ See n. 3 at 45.

47/ Immigration and Naturalization Annual Report 93 (1967).

48/ Interview with Mr. Donald Coppock, Deputy Associate Commissioner for Domestic Control, Immigration and Naturalization Service, in Wash.,D.C., October 15, 1968.

49/ Interview with Mr. Henry Munoz, Jr., Texas AFL-CIO, in Austin, Texas, Sept. 10, 1968. The Service's recognition of the illegal employment of white carders was evidenced by a recent announcement of proposed regulation changes. Under current regulations white carders are issued undated cards and are expected to return within 72 hours and travel no farther than 150 miles from the border. "Government officials say the lack of dates on the present crossing cards makes it almost impossible to enforce regulations."

The proposed changes would limit the travel on undated cards to within 25 miles of the border. For those wishing to travel further a supplemental card that is dated will be issued allowing a 15 day visit. Of course these new limitations will not affect the employment pattern of white carders along the border area. See San Antonio Express, p. 1 (Nov. 29, 1968).

This is because many white cared workers are employed in occupations with low visibility and even with the best efforts of immigration authorities, they cannot be easily discovered. Many white card holders use their 72 hour passes to engage in menial work as domestic maids, dishwashers, hotel and motel workers, and construction workers. Others work in such semi-skilled jobs as masonry and carpentry. 50/

One reason for this wholesale employment of white carders is the lack of legislation effectively preventing employers from knowingly hiring these workers. As it now stands, the law contains provisions expressly facilitating such employment. Section 274(4) of the Act, prohibiting the harboring and concealing of alien's, contains the following proviso:

> . . . for the purposes of this section, employment including the usual and normal practices incident to employment shall not be deemed to constitute harboring. 51/ (Emphasis added.)

The need for legislation correcting this situation is manifest.

USE OF COMMUTERS AS STRIKE-BREAKERS

Organized labor has been deeply concerned with the use of commuters as "strike-breakers, when workers were engaged in the process of trying to negotiate conditions covering their wages". 52/ The recent strike in Starr County, Texas, presented an example of the use of commuters during labor disputes. In a hearing held by the Senate Subcommittee on Migratory Farm Workers Organizing Committee of the AFL-CIO, had this to say about one of the farms which his organization picketed:

> Mr. Padilla: La Casita Farms, which we are on strike with. And this is a bona fide certified strike, issued by the State of Texas, the Texas Employment Commission. I witnessed that they load the bus full of Mexican nationals, and escort them right into the fields, and now they tell us that we don't have a right to picket, to talk to them.

50/ Id.

51/ See Immigration and Nationality Act, n.5, supra.

52/ Hearings on § 8, 195, 197, 198 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare, 90th Cong., 1st Sess. pt. 1, at 170 (1967).

Mr. Yarborough: You mean that La Casita Farms took their transportation to the bridge and picked these workers up with the green cards and brought them straight up to their farms, and put them on the farms?

Mr. Padilla: That is correct, sir. 53/

Domingo Arrendondo, Strike Chairman, United Farm Workers Organizing Committee, AFL-CIO, said with regard to the Starr County strike:

> (T)he problem about these green carders is that they come to work from Mexico every day. They will come in the morning and they will go back at night. Now that the minimum wage came up, or a little bit right after the strike started, they raised the price on these workers from 85 cents or 80 cents to $1 an hour and to $1.50. That was just a symbol to break the strike movement, to keep these people from joining the strike for better wages, or for a contract, or a union contract. We went and talked to these people at the bridge, international bridge. We told them to cooperate with us for better wages and working conditions, but they will always say that if their friend had already signed that they would sign, that they would sign but they would probably get laid off their jobs. So, really we couldn't get no where convincing them that a union is something that a worker needs. (Sic) 54/

A result of the misuse of green card workers as strike-breakers was the aforementioned 1967 amendment to the INS regulation, barring employment of green card holders at locations where a labor dispute has been certified by the Secretary of Labor. 55/

53/ *Id.* at 334.

54/ *Id.* at 363.

55/ *See* n. 7.

RELATIONSHIP OF COMMUTER TRAFFIC TO MIGRATION

As a result of its impact on wages, unemployment and working conditions, the commuter traffic contributes to the annual massive migration of Mexican Americans from the border area. The Social Action Department of the Texas Catholic Conference estimates that because of the lack of opportunities in South Texas, 88,700 farm workers must migrate to other areas of the country every year in order to find employment. These are people who live in the border areas and would otherwise seek employment there, but for the saturation of the labor market by the commuters. The Committee had this to say:

> Unfortunately, because of the vast supply of green carders . . . the domestic workers are unable to compete with the depressed wages that result from the availability of cheap labor to the growers. This accounts for the fact that almost one-half of the Texas migrant workers come from the four counties of the Lower Rio Grande Valley.56/

PROPOSED SOLUTIONS TO THE COMMUTER PROBLEM

Various recommendations have been made to alleviate conditions caused by the commuter program. Henry Munoz, Jr., speaking for the Texas AFL-CIO, urged that the Department of Labor issue a regulation for a minimum wage law of $1.25 to be applicable to green-card holders and commuters. 57/

In a letter from Chairman Richard M. Scammon and Stanley H. Ruttenberg, of the Select Commission on Western Hemisphere Immigration, the following recommendations to the President regarding commuters were made:

> As of a date certain, all visas issued for immigration into the United States be firmly understood to include a clear commitment by those immigrating to establish and maintain their bona fide residence within the United States.

56/ *See* n. 52 at 61.

57/ *Munoz, View of Organized Labor* 3.

> A new form of border crossing authorization be established, this authorization being designed for use by non-citizens who do not intend to become immigrants in the ordinary sense of the word, but who do wish to work in the United States and continue to reside in their own "contiguous territory" country.
>
> Within a grace period, action should be taken to terminate the commuter status of present "green cards" holders. 58/

On December 14, 1967 Senator Edward Kennedy, a member of the Senate Subcommittee on Migratory Labor, introduced a bill in Congress to amend Section 212 of the Immigration and Nationality Act. As the Senator explained, the amendment would not eliminate the commuter system, but refine its current operation. The bill in essence provides ". . . that each commuter alien must be regularly certified every 6 months by the Department of Labor that his presence in the United States to seek or continue employment does not adversely affect the wages and working conditions of American workers similarly employed. The bill provides for the revocation of a commuter alien's labor clearance if he violates administrative regulations, such as a ban on strike breaking, prescribed by the Department of Labor and the Immigration Service to carry out the purpose of this bill". 59/

58/ Letter from Richard M. Scammon and Stanley H. Ruttenberg to President Johnson, July 22, 1968.

59/ 113 Cong. Rec. 205 (December 14, 1967). The amendment reads as follows:

S. 2790

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 212 of the Immigration and Naturalization Act is amended by adding at the end thereof a new subsection as follows:
>
> "(j) Any alien lawfully admitted for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States and is returning from a temporary stay in such foreign country to seek or continue employment in the United States shall be admitted into the United States only if the Secretary of Labor has determined and certified to the Attorney General within six months prior to the date of admission that the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed, and if such certification has not been revoked on any ground. The provisions of this subsection shall be applicable to any aliens lawfully admitted for permanent residence, whether or not such aliens were so admitted prior to or on or after the date of enactment of this subsection."

This bill has received strong opposition from Chamber of Commerce groups, farm grower organizations, and retailers. The Laredo Chamber of Commerce has gone on record as being opposed to any change in the commuter system. 60/ This opposition is based on economic reasons. Laredo, last year, had retail sales of over 90 million dollars, much of this being to commuters. Business interests feel that if anything happens to change the status of commuters their towns will become "ghost towns". Organized growers are afraid that they will be cut off from a valuable supply of labor. Willis Deines, attorney for the Texas Citrus and Vegetable Growers, indicated why his group is opposition to the Kennedy Bill: ". . . It is axiomatic that if our growers do not have a source of labor that can be depended upon to do their farming operations, particularly in the harvest of perishables, then of course we would not have an industry." 61/

Businessmen in the Valley area have indicated a fear that any effort to terminate the commuter program will result in a retaliatory refusal by Mexico to allow its citizens to carry on their extensive trade in American border towns. The suggestion by Antonio Carrillo Flores, Foreign Secretary of Mexico, that Mexican commuters have "acquired rights", lends authority to this suspicion. 62/

The American government also has officially voiced its concern with diplomatic relations in approaching the commuter problem. In the aforementioned case of Texas State AFL-CIO v. Robert Kennedy, et al., where the legality of the commuter program was put into issue, Secretary of State Dean Rusk, submitted an affidavit opposing interference with the commuter program on the grounds that it would ". . . do harm to good neighbor relations in the area". 63/ He stated further:

> (I)f as a result of a substantial reduction in the commuter traffic across the border between Mexico and the United States, a significant number of Mexican nationals would be deprived of their earning power, the trade between the two countries along

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60/ See Laredo Times, p. 4 (Mar. 1, 1968).

61/ Id.

62/ See Laredo Times, p. 4 (Feb. 4, 1968).

63/ Brief for Defendant, Texas State AFL-CIO v. Robert F. Kennedy, et al., Civil No. 3468-61, n. 25, supra.

> the border would be substantially reduced. We could expect that this would have an immediate depressing effect on the economy of the region on both sides of the border. Moreover, the loss of gainful employment and dollar earnings by 30,000 to 50,000 Mexican nationals, estimated at over $50 million annually, might compel the government of Mexico to consider compensating steps, which would do further damage to the economic life of the region.

The Mexican American in the border area is thus charged with the responsibility of protecting our diplomatic relations. The economic burdens involved in this charge, he may justifiably feel, should be borne by the Nation as a whole, not thrust upon a minority of its citizens.

GREEN CARDS LABOR AND THE DELANO GRAPE STRIKE: A STUDY OF POST-BRACERO MEXICAN NATIONAL FARM WORKERS IN THE SAN JOAQUIN VALLEY, 1968

(Prepared by Richard A. Fineberg for the Council for Christian Social Action and Board of Homeland Ministries, United Church of Christ, October 31, 1968)

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Responsibility for the contents of this report, of course, rests entirely with me. Questions, comments and criticisms will be welcomed and may be addressed to the author as follows: Richard A. Fineberg, 5201 Palmer Canyon, Claremont, Calif. 91711.

I. INTRODUCTION

There is no quick or easy solution to the labor dispute which polarizes Delano, California, the center of the largest table-grap producing area in the United States. The problem is a tangled one: The United Farm Workers Organizing Committee (UFWOC) seeks collective bargaining elections to determine whether or not workers employed by California table grape farmers desire union representation. In each of nine elections or card checks conducted at ranches producing winery grapes to ascertain workers' desires, the workers have endorsed UFWOC.[1] Table grape growers, however, remain rigid in their unwillingness to countenance the possibility of losing an election and being forced to recognize the union.[2] As the strike drags on, the growers continue to tap the complex and constantly shifting pattern of farm labor in the San Joaquin Valley to harvest their crop in spite of UFWOC's organization efforts.

Who harvests the grapes? Among those persons who have not heeded the union's call to picket rather than pick are: (1) those farm workers whose poverty and family responsibility prevent them from joining the picket line of a newly-formed union; (2) housewives and students who work temporarily during the peak harvest season; (3) Mexican nationals with no legal status in the United States (illegal-entry "wetbacks"); (4) Mexican nations with permanent resident visas which enable them to work in the U.S. and spend a substantial portion of the year in Mexico. Although this report focuses primarily on the Mexican national permanent alien resident, field study conducted during the summer of 1968 indicates that all four types of strikebreakers are being employed in large quantities during the Delano grape harvest.

Workers of Mexican descent comprise the great majority of the labor which harvests the crops produced by California's thriving agricultural industries. More than half of the Mexican-descent workers are Mexican nationals. The Mexican national working in California's fields may have one of three legal statuses. In popular terminology he may be identified as a wetback, a bracero or a green card. It will be useful at the outset to differentiate these three statuses in order to clarify the problems with which we are dealing.

Wetbacks.—During fiscal 1967 the U.S. Immigration and Naturalization Service (INS) located 108,327 deportable Mexican aliens. Of that total, about 78,000 entered the U.S. by crossing the land border between Mexico and the southwestern United States. Although some enter overtly with forged or altered documents, almost all of the 78,000 are catalogued as "surrepititious entries" with no papers whatsoever.[3] Although it is difficult to ascertain how many illegal aliens are engaged in farm labor in California (estimates range from 2 to 25 percent of the labor force), it is certain that there are many "wetbacks" working in the fields.[4]

Braceros.—Braceros were admitted to the U.S. under PL 78 which terminated December 31, 1964. Under PL 78 braceros received temporary permits to work for specified contracting employers for a limited period of time. Although some braceros have been authorized in special cases since the termination of PL 78, the large-scale use of bracero labor has ceased. There were no braceros authorized for California farm labor during the period in which this project was conducted.

Green Cards.—The Mexican National permanent alien resident is commonly referred to as a green card or green carder. The term derives from the color of the INS Form I–151 registration card he carries bearing his picture and identification number.

3,210,678 permanent alien resident green cards reported their addresses to INS in January 1967. Of that total, 668,514 were Mexican nationals. About 53 per cent of the Mexican nationals (354,000) listed California as their home state.[5] The green card may be used at the border in lieu of a visa for re-entry. Many green-carders—ostensibly immigrants—maintain homes and families in Mexico and use their green card to cross the border to work in the U.S. Those green card holders who live in border regions are permitted to cross the border daily, working in the U.S. by day and returning home to Mexico by night. Green carders also commute on a seasonal basis, harvesting crops in California during the summer, for example, and returning home to Mexico to vacation during the winter.

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[1] California wineries at which contracts with UFWOC are in effect include Almaden, Christian Brothers, DiGiorgio, Gallo, Goldberg, Novitiate, Paul Masson, Perelli-Minetti and Schenley.

[2] Provisions of the National Labor Relations Act which guarantee workers in industry the right to collective bargaining do not extend to farmworkers.

[3] *Annual Report of the Immigration and Naturalization Service, 1967,* pp. 11–12.

[4] During the 6 months from March through August, 1968, it has been reported that more than 2,000 illegal entry Mexican aliens were apprehended in Kern County alone.

[5] *Annual Report of the Immigration and Naturalization Service, 1967,* p. 23.

Are green card seasonal commuters, working either intentionally or unintentionally to the detriment of unionization efforts, a significant factor in the Delano table grape harvest? This is the question to which the following study is addressed.

II. LEGAL DIMENSIONS OF THE GREEN CARD QUESTION

Federal immigration law is of central importance to the green card question. Acts of Congress are the basis for the administrative procedures followed by INS and its Border Patrol field units. The legal dimensions of the green card issue revolve around the Immigration and Nationality Act of 1952, PL 414 (the McCarran-Walter Act), as amended in 1965 by PL 89–236, and administrative regulations pursuant to those acts.

PL 414 allowed non-immigrant temporary workers to enter the U.S. as long as the Secretary of Labor did *not* certify that their presence would have an adverse effect on the wages and working conditions of U.S. domestics similarly employed. Moreover, Mexican aliens were allowed to enter the U.S. as Western Hemisphere special immigrants without consideration of their impact on domestic working conditions and wages.[1] PL 89–236, however, modified the original act with specific provisions designed "to protect the American labor market from the influx of both skilled and unskilled labor".[2] Specifically, the new law enacted by Congress in 1965 stipulates that no immigrant visa for the purpose of temporary labor can be issued *unless* the Secretary of Labor has certified that the domestic labor supply is inadequate and that the entry of such aliens would not adversely affect the wages and working conditions of individuals in the same occupation. These amendments to PL 414 notwithstanding, the green card continues to be used in lieu of a visa at the border, enabling a green carder to work in the United States while maintaining his permanent home in Mexico.[3]

The ease with which the Mexican national green carder may cross the border has special bearing on domestic labor disputes: The green carder who maintains his permanent residence in Mexico is liable to upset the balance between labor and management by seeking work at the site of a labor dispute.

Thus the green card commuter, geared to the lower cost of Mexican living index and lacking a stake in the resolution of domestic labor disputes, is liable to affect a strike to the detriment of the goals sought by striking domestic workers. In this instance the commuting alien is not filling a normal labor shortage as envisioned in either PL 414 or PL 89–236; rather, he is filling a labor demand artificially created by the strike.

It is to prevent this misapplication of immigration procedures from interfering with domestic labor disputes that a Federal Regulation, designated 8 CFR 211.1(b)(1) was promulgated on June 10, 1967, to restrict the use of a green card for re-entry by a would-be strike-breaker. According to the Federal Register in which the new regulation was published, "The basis and purpose of the . . . (regulation) is to preclude the use of Form I–151 by a lawful permanent alien resident in lieu of his obtaining . . . a re-entry permit when such use would adversely affect a domestic labor dispute".[4] The regulation itself, however, is a good deal less proscriptive:

> When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form I–151 shall be invalid when presented in lieu of an immigrant visa or re-entry permit by an alien who has departed for and seeks re-entry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks re-entry with the intention, of accepting employment at the place where the Secretary of Labor has determined

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[1] See 8 USC Sec. 1101(a)(27)(A), 8 USC Sec. 1182(a)(14).

[2] U.S. *Congressional and Administrative News,* 1965, Senate Rept. 748, p. 3333.

[3] The practice of allowing green card holders to return to the U.S. without restriction is presently being challenged in court. (Joe Gooch and Rafael Bustamente *et al.* v. Ramsey Clark, *et al.,* filed June 25, 1968, in U.S. District Court, San Francisco). The thrust of this complaint is that the temporary immigration of green card holders who actually reside in Mexico has an adverse effect on both the wages and working conditions of California farmworkers and that all green card commuters should therefore be excluded from reentry. The plaintiffs seek to compel INS to distinguish at the border between lawfully readmissible permanent alien residents and green card commuters who would not be readmissible under the 1965 modifications to the McCarran-Walter Act.

[4] 32 *Federal Register* 112 (June 10, 1967).

that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination."

A decision handed down in the Central District Court of California August 2, 1968, upheld the limited validity of 8 CFR 211.1(b)(1). The decision held that an alien who has not perfected his status as a permanent resident is still "at sufferance of the Attorney General". In other words, the Attorney General still has discretionary powers over the re-admission of a green card who has not established his lawful permanent residence in the United States. The regulation is therefore valid when limited, in the phrasing of the Immigration Service Counsel, "to aliens who live in a foreign country".[5]

Although 8 CFR 211.1(b)(1) remains on the books, the letter of the law and its application in practice are sometimes entirely different matters. In practice the regulation appears to have virtually no force whatsoever. UFWOC officials note that INS has yet to utilize the regulation to effect what the union feels to be the regulation's expressed purpose: to prevent green card holders from crossing the border to work as strike-breakers.

III. PHYSICAL DIMENSIONS OF THE GREEN CARD QUESTION

A. Introduction

How important is the green card issue to the labor dispute in the table grape industry? The relative importance of the problem is contingent upon the incidence of green carders who still maintain Mexican residence to the total number of workers on struck ranches. A quantitative inquiry, then, is clearly necessary. Two kinds of data are involved—immigration and farm labor statistics.

Meaningful farm labor statistics are difficult to obtain because the farm labor pool is highly fluid and conditions will vary markedly from week to week, county to county, crop to crop and camp to camp. Consequently, basic statistics on farm labor should be used cautiously and should be regarded as estimates rather than precise quantification. This is particularly true of the primary source for information on farm labor in California, the reporting section of the Farm Labor Service of the State Department of Employment.

With regard to green card holders, prior to this summer INS had no publicly available information on the incidence of green card commuters and no precise information on green carders in farm labor.[1] During the past summer INS began to remedy this situation by instituting a series of procedures designed to enable immigration authorities to distinguish among temporary border crossers, daily and seasonal commuters, as well as to identify green card holders working on struck ranches. How effective this system will be remains to be seen.

This project was conceived in response to the need for concrete information on the green card worker in the Delano table grape harvest. Before we turn to the study itself, a thumbnail sketch of the Delano region and the table grape harvest force will be useful to put the problem into focus.

B. Profile of the Delano Table Grape Region

1. *Location, Acreage and Varieties of Grapes.*—Last year 89% of this nation's grapes were grown in California.[2] California table grape growers harvested over 80,000 acreas.[3] The Delano region is the largest table-grape producing region in the country. Lying in a rough triangle bounded by the towns of McFarland, Earlimart and Ducor (see map, Appendix II), this area includes approximately 10,000 acres of table grapes in Kern County and 18,000 in Tulare County. Thomp-

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[5] Giumarra v. I&NS (Memorandum of Decision, U.S. District Court, L.A., August 2, 1968).

[1] The U.S. Department of Labor has attempted to extract data on green card farm labor from a sample of the cards which aliens must file with INS in January of each year. See "Characteristics of Mexican Immigrants Working on Farms", *Farm Labor Developments,* September–October 1967 (Fourth Issue), pp. 36–41. According to this study, some green card holders "continue to live in Mexico and migrate seasonally to the United States or commute daily to jobs in border areas". This study has two major shortcomings: First, the month during which address forms must be filed with INS—January—is precisely the time at which the green card seasonal commuter is most likely to be out of the country. Second, more than half of the occupations reported on the sample were general laborers, housewives, students, unemployed or unknown. Many of these persons, the study notes, probably engage in farm labor "at one time or another during the year".

[2] California, Department of Employment, Farm Labor Service, *California Annual Farm Labor Report, 1967,* p. 5.

[3] California, Department of Agriculture, Crop and Livestock Reporting Service, *California Fruits: 1967 Annual Summary,* p. 3.

son seedles grapes, the most common variety in the Delano vicinity, account for about 16,000 acres. Much of the remaining acreage in the Delano vicinity is planted in the Emperor variety. The peak Thompson harvest in this area occurs in late August; the Emperor harvest does not begin until early September, after the peak Thompson harvert is virtually completed.[4]

2. *The Work Force: Number, Habitat, Ethnic Composition.*—During the week of the peak Thompson harvest in the Delano vicinity in 1968, the Farm Labor Service estimated that 8,500 workers were picking grapes in Kern and Tulare Counties.[5] The majority of those workers were located in the Delano region, although many were working on scattered grape ranches outside the area.

One grower described as "typical" employed a maximum peak harvest work force of one person per 2.12 acres. If that ratio held for other ranches and the entire Thompson crop required simultaneous harvesting, the total work force in the Delano vicinity for that period would be 7,550 workers. The Thompson harvest, however, is in fact stretched out over a period of several weeks and not all acreage is harvested simultaneously. The growers' estimate of "more than 5,000 workers" seems to be a reasonable one.[6]

During the peak Thompson seedless harvest in 1968, approximately 2400 workers were living in about 60 grower-owned or grower-operated camps in the Delano vicinity.[7] At that time most of the remaining grape pickers, numbering perhaps 3,000, lived in various scattered communities in the vicinity (see map, Appendix B).

The work force includes a large number of students and housewives who are not full-time field workers. A study conducted in Kern County in 1961 showed that nearly half of the farm labor force was comprised of seasonally-employed wives and youths.[8] Other studies indicate that students and non-student women have been utilized in increasing numbers throughout the San Joaquin Valley since the termination of the bracero program.[9] It seems reasonable, therefore, to estimate that housewives and students comprise a minimum of 40% of the peak labor force harvesting Delano grapes.

Depending on the source and the definition of migrancy, estimates vary widely on the number of migratory workers engaged in the Delano table grape harvest. Field data accumulated in the process of this study indicate that during the 1968 harvest 35% of the workers living in grower-owned or grower-operated camps lived or worked in one other area outside the daily commuting area, 33% lived or worked in two or more other areas, and 32% lived and worked only in the Delano vicinity. Among the community residents who worked the grape harvest the degree of migrancy was somewhat lower but still significant.(*See Appendix D*).

Estimates regarding the ethnic composition of the Delano table grape work force also vary. Although a large number of Anglos and Negroes work in other agricultural activities in Kern County, e.g., potatoes, cotton and sugar beets), there are virtually no Anglos and few Negroes harvesting table grapes. One grower estimates that 40% of the labor force is Mexican, 40% Filipino, the remaining 20% predominantly Puerto Rican and Arabian. With regards to workers of Mexican descent this estimate seems rather low: A spokesman for the Delano growers has acknowledged that the percentage of Mexican national green card holders alone may be as high as 40%. The latter estimate is in line with figures from routine Border Patrol field checks conducted during 1968.[10]

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[4] Based on information and estimates provided by the Kern and Tulare County grape specialists of the California Department of Agriculture and the Delano-Earlimart Irrigation District.

[5] California, Department of Employment, Farm Labor Service, *Weekly Farm Labor Report,* August 24, 1967.

[6] *The Delano Grape Story . . . From the Growers' View* (Delano: South Central Farmers' Committee, 1968).

[7] See Appendix C, Table One.

[8] William H. Metzler, *Farm Mechanization and Labor Stabilization* ("Technological Change and Farm Labor Use, Kern County, California, 1961", Pt. II; Berkeley: Glanini Foundation Research Reports, 1965), pp. 20–24.

[9] See for example James W. Becket, The Domestic Farm Laborer: A Study of Yolo County Tomato Pickers ("Department of Agricultural Education: Research Monographs", No. 2; Davis: University of California, 1966).

[10] According to Border Patrol checks covering 4,893 workers at 24 struck ranches during early 1968, 2,009 were green card holders. A Border Patrol field ranch check conducted during the peak Thompson harvest in vineyards in the Delano vicinity indicated that 83 of 195 workers investigated (42.6%) were green card holders.

With this background sketch of the work force in the Delano table grape industry in mind we now turn to the problem with which this study is concerned: Do green card holders who take advantage of loopholes in immigration procedures to return to Mexico for extended periods of time constitute a significant portion of the Delano table grape harvest force?

IV. THE GREEN CARDER IN THE DELANO TABLE GRAPE HARVEST FORCE: SURVEY RESULTS AND CONCLUSIONS

A. Introduction

This survey was conducted in the Delano table grape region of Kern and Tulare Counties during the peak Thompson seedless harvest week of August 19–23, 1968. The period of time was limited to five days in order to minimize the possibility of double-counting as workers moved in and out of the area. Interviewers covered 60 grower-owned labor camps in the area. Survey teams also worked in the rural communities of Terra Bella, Earlimart, Richgrove, Ducor and McFarland, as well as in Delano. (Interviewing was also conducted outside the Delano table grape region at the Tulare County Farm Labor Center in Woodville and the Wasco Farm Labor Camp, as well as in a privately-operated tract in Shafter; results from the latter three locations are not tabulated here.)

Interviewers used a uniform survey schedule (see Appendix A) and usually worked in pairs; at least one person in each team was bi-lingual (more than two thirds of the Mexican-descent interviews were conducted in Spanish). A total of 368 forms were filled out. Of these, 219 were taken in grower camps and 149 in rural or semi-rural communities.

In considering the data from this survey the reader is advised to remember that this project was conducted in a troubled atmosphere resulting from the continuing labor dispute. Workers were often reluctant to talk to outsiders, even with the permission of their employer. At one camp, for example, an interviewer noticed that many potential subjects left the barracks hastily by one door as he entered the other. Unwillingness to be interviewed was particularly noticeable among Mexican-descent workers. Due to wide-spread union publicity informing green carders that their employment at struck ranches might jeopardize their legal status in the U.S., it would be reasonable to assume that green card seasonal commuters would be especially unwilling to be interviewed or might falsify information concerning their immigration status. When these factors are taken into consideration, the incidence of alleged seasonal commuting among green card holders reported below is strikingly high. Moreover, it seems probably that the incidence would be much higher if random surveying under non-stress conditions were possible.

Interview teams sought to conduct interviews at random but the tendency for potentially deportable aliens to avoid attention of any sort probably resulted in a skewed sample. Therefore the data reported below may be taken as indicative of the minimum degree to which this migratory pattern is prevalent among Delano table grape pickers of Mexican descent.

B. Data on Green Carders in Delano

With regard to green card holders and the Delano table grape harvest, the data presented in the tables (App. C) point to the following conclusions:

1. *The majority of the Mexican-descent workers are green carders.*—61.2% of the Mexican-descent subjects (74 out of 121) were green card aliens.

2. *Many Mexican green card holders have entered or re-entered this country during the last two years.*—41.2% of the Mexican-descent subjects (49 out of 119) were green carders who had crossed the border since January 1967.

3. *Many green carders spend extended periods of time in Mexico.*—26.5% of the Mexican-descent subjects (30 out of 113) were green cards who had re-entered the U.S. since January 1967 after spending one month or more in Mexico.

4. *This migratory pattern is particularly noticeable in labor camps, but it is also prevalent in rural communities.*—In grower-owned or grower-operated camps, 44 out of 67 Mexican-descent subjects were green card holders, of whom 15 out of 63 (23.8%) had spent three consecutive months or more in Mexico since January 1967. One would expect farm workers living in rural communities to be significantly less transient than those living in labor camps. Nevertheless even in community dwellings 30 out of 54 Mexican-descent subjects were green card holders and 6 out of 54 (11.1%) had spent three consecutive months or more in Mexico since January 1967.

C. Green Card Seasonal Commuters and Labor Disputes

What effect does this incidence of green card seasonal commuting have on domestic labor disputes such as the one in the table grape industry? In all probability the green card commuter will not be receptive to a unionization movement. He comes to the U.S. to earn money, returns to Mexico to spend it. He does this because he is able to work for higher wages in the U.S. than he could in Mexico. His American-earned income, applied to the lower Mexican cost of living, gives him added purchasing power across the border. (Mexicans frequently observe that a dollar equals 12½ pesos but that 12½ pesos buys much more in Mexico than a dollar does in the U.S.) The green card holder thus is in a position to take advantage of a legal-administrative loophole which allows him the best of both worlds—American wages which may be spent on a foreign economy at a favorable exchange rate. Under these conditions he is hardly likely to leave his home in Mexico and come to California to join a strike on behalf of U.S. domestic whose interests are quite different from his own. If he has any stake in the socio-political processes of the U.S., it is to preserve the status quo, not to alter the system. In broad terms, the green card seasonal commuter has an adverse effect on the efforts of domestic farm workers to organize a union.

Green card seasonal commuters who work struck ranches may have a much greater impact in labor disputes than their numbers alone would indicate: Even though the domestic worker may know that his wages are substandard and may desire collective bargaining to remedy the situation, he will not be very likely to join the picket line if he fears that he can easily be replaced by a green card strike-breaker. Half a loaf being better than none, the threat of green card strike-breakers may serve to hold many potential domestic strikers to their jobs.

D. Proposal for a Strengthened Regulation

The burden of this report is that the incidence of green card seasonal commuting and its adverse effects on domestic labor disputes warrant effective enforcement of regulations to remedy the problem. The regulation restricting the employment of green card holders at struck ranches, 8 CFR 211.1(b)(1), has had virtually no effect on the California table grape strike. Its exact meaning is unclear; its complicated verbiage is considerably weaker than the statement of purpose which introduces it in the *Federal Register.* Moreover, at a critical point during the Coachella strike last June, INS was enjoined by a court order which prevented the Border Patrol from enforcing the regulation for several weeks.

One of the chief defects of 8 CFR 211.1(b)(1) is the inherent difficulty in interpreting and enforcing such basically ambiguous criteria as "primary purpose" and "intention" for crossing the border. INS reverts to location of permanent residence as the tangible criterion for establishing the primary purpose or intention with which a green carder crosses the border. Two difficulties immediately arise: First, the so-called permanent domicile of an agricultural worker is liable to be rather impermanent. Even if he does have a permanent residence—in Texas, for example—investigation necessary for proper verification of this fact may prove difficult and costly. Already pressed with increasing illegal entry problems stemming from Mexico's population boom and economic difficulties, INS does not seem to be in a position to provide the manpower which investigation of alleged permanent residence for each green card strike breaker would entail. The second problem is that INS tends to associate the permanent domicile with the location of the green carder's family. That guideline may have worked when the typical green card was a male, single or travelling alone. In 1968, however, many green cards were travelling with their famiiles, thus rendering obsolete this criterion for residence.[1]

As an alternative to the elusive criteria of intention and purpose stipulated by 8 CFR 211.1(b)(1) a new regulation might focus on the length of time spent in Mexico. The green card might be declared invalid for use at a struck ranch until the holder has demonstrated the validity of his immigrant status. Perfection of permanent alien resident status (a concept upheld by the Giumarra v. INS decision) would be achieved by the green card holder who lives in the U.S. continuously for one year, exclusive of a limited number of visits to Mexico not totalling more than a specified number of days (say, for example, 3 visits and 30 days). After one year of continuous residence in the U.S., the permanent alien resident would be entitled to seek employment at a struck ranch if he so desired. Such a procedure would not restrict the green card holder's right to cross the border freely. If properly enforced, however, it would accomplish the purpose for which 8 CFR 211.1(b)(1) was supposedly framed; to preclude the use of a green card for border crossing to work at a struck ranch.

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[1] The green card in California agriculture is usually characterized as a single male (possibly married with family in Mexico or Texas) who moves frequently to earn the highest possible wages. (See for example James W. Becket, *The Domestic Farm Laborer: A Study of Yolo County Tomato Pickers,* University of California Davis, Department of Applied Behavioral Sciences, Research Monograph #2, 1966, pp. 20–21.) This picture may no longer be valid. In the pilot study for this project, extensive interviewing was conducted in OEO flash-peak housing units in Stanislaus County. Out of 41 families interviewed, 30 were green card holders. Contrary to the classifical picture, the typical green card in these camps seemed fairly stationary, hoeing tomatoes at $1.50 per hour rather than looking elsewhere for fruit-picking jobs which would offer substantially higher piece-rate wages.

E. INS and Enforcement of Border Regulations

The letter of the law notwithstanding, INS will continue to play a key role in the green card problem. Restrictions on green card seasonal commuting can be no stronger than the will and capabilities of INS to enforce them.

An unpublished U.S. Department of Labor report which issued from an investigation of the green card problem in Delano last Spring noted that INS field investigations were "rather superficial." At that time, Labor Department officials observed, when the Border Patrol encountered aliens working at struck ranches in possible violation of immigration regulations they made no effort to remove or detain the suspected violators.

According to the Labor Department report, this negligence permitted the suspected alien to leave the area temporarily, only to return at a later date when no longer under scrutiny by INS.[1]

INS has instituted new procedures apparently designed to tighten up enforcement of immigration provisions, but the routine field-ranch check conducted in the Delano vicinity August 21 did not appear to be very thorough. Although Border Patrol ground units were checking for violations of green card regulations (they found none), the light-aircraft pilot guiding the ground units to field crews indicated that he was choosing crews without any regard for the strike below and that he had not been advised as to which ranches below had labor disputes which might require more thorough Border Patrol checking. During the check the ground unit inadvertently "lost" two presumable wetbacks when they fleld the field in which they had been working. That closed the incident for the Border Patrol, but it would have been a fairly simple matter to locate the camp in which the two lived in order to apprehend them. In fact, a member of this research team, without prior knowledge of the Border Patrol check or the suspected wetbacks who had fled, identified the camp later the same day when he overheard a conversation about the incident while requesting permission to conduct interviews at the camp in which they lived. In another camp within the area which the Border Patrol had checked that morning, interviewers working on this project located two probable illegal entries who claimed to have lost their green cards and several other probable violators of 8 CFR 211.1(b)(1). Both camps belonged to growers involved in the labor dispute.

In view of the presence of a significant number of green card seasonal commuters working in the Delano table grape industry, a stronger and more clearly-worded regulation governing the use o fa green card for border-crossing to break a strike would seem to be in order. Getting a stronger regulation on the books, however, is only the first step. It is evident that even if a new green card regulation were to be promulgated, it could be given teeth only by vigorous and thorough enforcement on the part of INS.

APPENDIXES

A. Sample Interview Schedule
B. Maps
    1. San Joaquin Valley
    2. Delano Table Grape Area
C. Tables
D. Miscellaneous Data

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[1] The Department of Labor filed "The Alien Commuter Problem" when its representatives to the combined Labor-Justice task force inquiry which met in Delano May 6–7, 1968, did not concur with the report INS representatives drafted for the Attorney General. See Los Angeles Times, June 21, 1968, p. 3.

SAN JOAQUIN VALLEY FARM LABOR SURVEY

INTRODUCTION: This project seeks to provide better understanding of the problems facing farm workers and growers by obtaining accurate information about migratory patterns -- How many workers actually do migrate? How far do they travel? With family? Etc.

This study is being conducted by a graduate student as part of his Ph. D. program. It has no connection with union activity or any government organization.

We do not need your name; the purpose of this study is merely to learn about migratory patterns; your time and cooperation will be very much appreciated.

1. Location: ____________ 2. Date: Aug. ☐ 3. Male ☐ Female ☐

4. Mexican ☐ Anglo ☐ Negro ☐ Filipino ☐ P.R. ☐ Other ☐

5. Age ☐ 6. Education: Grade 1 2 3 4 5 6 7 8 9 10 11 12 Other ______

7. Single? ☐ Married? ☐ 8. Is your immediate family with you? Yes ☐ No ☐

8 a. IF "NO": Where is your family? ____________

9. How many months a year do you work in the fields? ☐

10. What crop are you working now? ______ For whom? ____________

11. How long have you worked for your present employer? ____________

12. What other crops have you worked during the past two years? ____________

13. What other areas have you worked in during the past two years? ____________

14. Where do you expect to go after the grape harvest is finished?

Stay here ☐ Go to: ☐ U.S. ☐ Mexico

15. What do you expect to do after the grape harvest is complete?

Farm work ☐ Other ____________

16. Last year where did you spend the winter? U.S. ☐ Mexico ☐

17. Date of last entry into U.S. from Mexico ______

How long were you there? Less than one week ☐

More than one week ______ weeks ______ months

17. Green-carder? Yes ☐ No ☐ (asked ☐ inferred ☐)

ADDITIONAL DATA:

18. Interview in: English ☐ Espenol ☐

19. Data Reliable? Yes ☐ No ☐

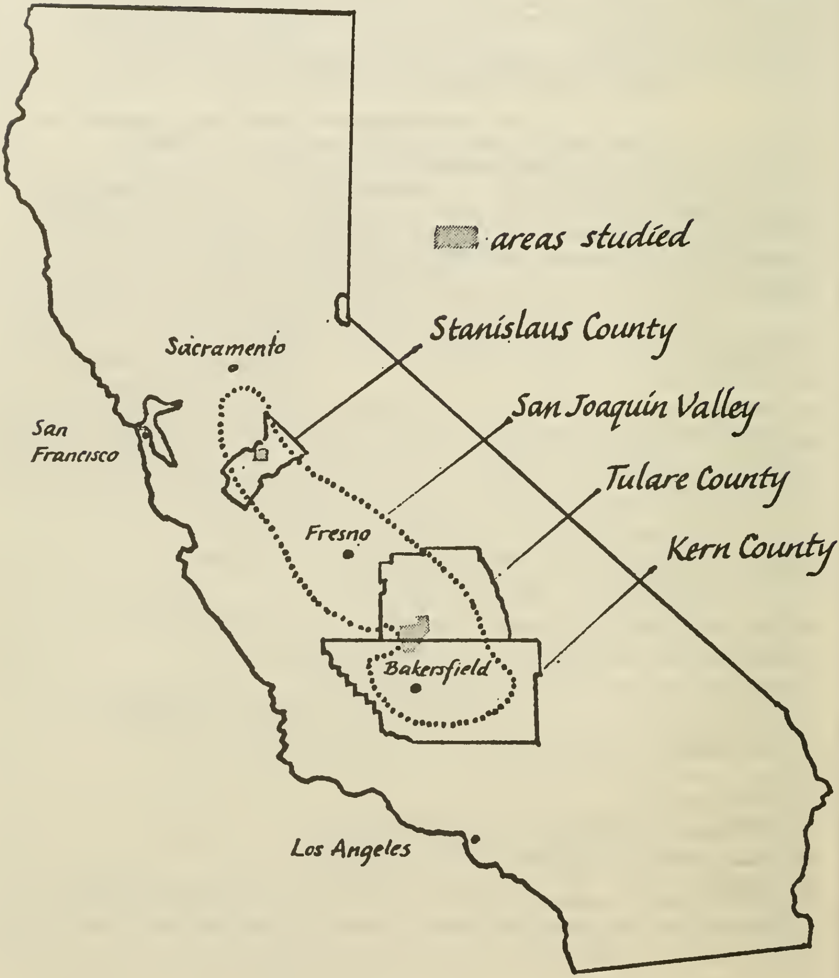
20. Comments: ________________________________

____

____

____

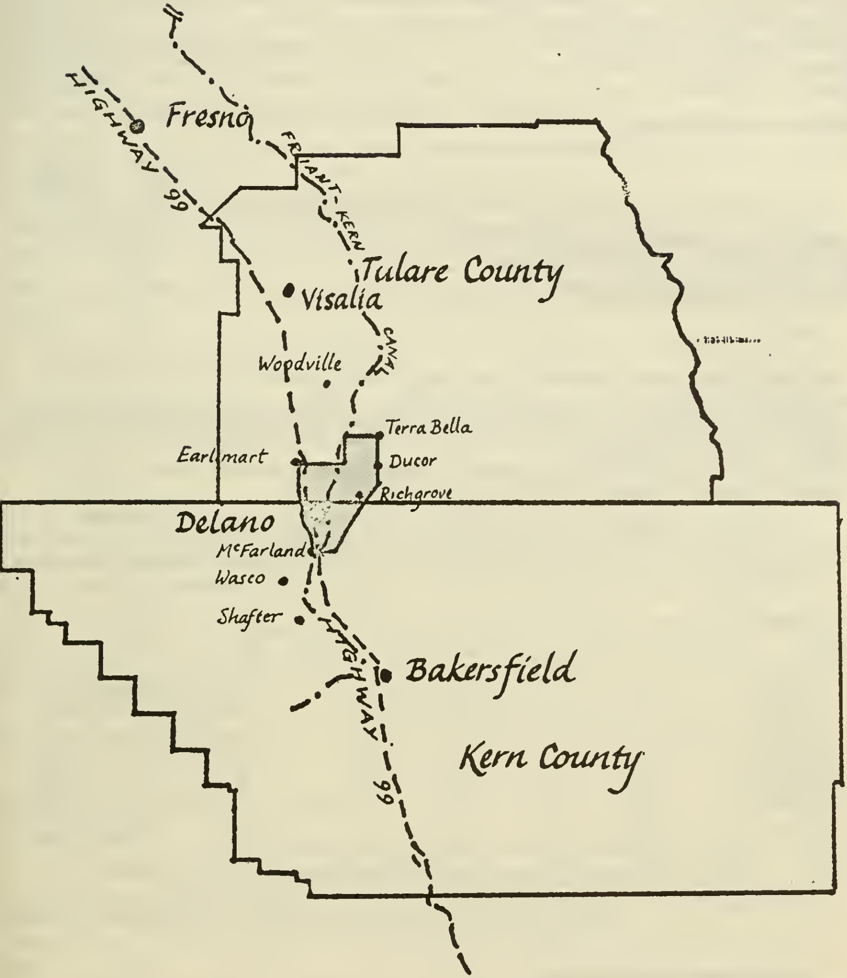
____



CALIFORNIA: SAN JOAQUIN VALLEY

▨ areas studied
Stanislaus County
San Joaquin Valley
Tulare County
Kern County
Sacramento
San Francisco
Fresno
Bakersfield
Los Angeles

DELANO TABLE GRAPE AREA


HIGHWAY 99
Fresno
FRIANT-KERN CANAL
Tulare County
Visalia
Woodville
Terra Bella
Ducor
Earlimart
Richgrove
Delano
McFarland
Wasco
Shafter
HIGHWAY 99
Bakersfield
Kern County

APPENDIX C: TABLES

TABLE No. 1.—*Delano-vicinity labor camps owned or operated by Table Grape Growers*

Camps registered with State division of building and housing standards	71
Camps located for survey	62
Camps operating during survey	51
Camps closed during survey	11
Camps not located	9

TABLE NO. 2.—DELANO-VICINITY GROWER CAMPS IN OPERATION, BY NUMBER AND ESTIMATED POPULATION

	Number of camps	Estimated population
Operating camps, 2 or more complete interviews taken	34	[1] 1,405
Operating camps visited, no interviews taken	9	[2] 795
Operating camps visited, occupants unwilling or hostile	4	
Operating camps, access denied by grower or owner	4	
Camps not located, presumed operating[3]	9	[4] 207
Total	60	2,407

[1] Population estimated on basis of interviewers' observations, statements of occupants and, where possible, camp or crew bookkeeper's records.

[2] Field estimates available for 8 of 17 camps. When not available, the following basif for estimation was used: In 43 camps where field estimates were made, the ratios between those estimates and the maximum capacity listed with the Division of Building and Housing Standards was established. The ratio was used as the basis of estimation on camps for which field estimates were not possible.

[3] All treated as open to compensate for the possibility of unregistered camps in the Delano vicinity.

[4] Population estimated by the method described in footnote 2 above.

TABLE NO. 3.—NUMBER OF INTERVIEWS TAKEN, BY ETHNIC ORIGIN, IN AND OUT OF CAMPS

Ethnic origin	In camp	Out camp	Total
Mexican descent	91	131	222
Other	128	18	146
Filipino	97		
Puerto Rican	20		
Arabian	5		
Negro	1		
Chinese	1		
Japanese	1		
Korean	1		
Not stated	2		
Total	219	149	368

TABLE No. 4.—MEXICAN-DESCENT INTERVIEW FORMS TABULATED AND DISCOUNTED

	In camp	Out camp	Total
Mexican-descent subjects interviewed	91	131	222
Forms tabulated	67	54	121
Forms discounted	24	77	101

TABLE NO. 5.—MEXICAN-DESCENT INTERVIEW FORMS DISCOUNTED, BY REASON FOR DISCOUNTING

Reason for discounting	In camp	Out camp
Altered green card [1]	1	0
Allegedly "lost" green card	2	0
Form incomplete	1	0
Subject unwilling to answer some questions	5	0
Vague, shifting, or self-contradicting	4	0
Interview deemed unreliable by interviewer, reason not stated	8	9
Not farmworker	1	14
Other	[2] 2	[3] 54
Total	24	77

[1] Immigration documents examined only when subject volunteered to show them.

[2] One "statistical twin" excluded because his responses duplicated his older brother's tabulated biography; one interview conducted in a rural home rented from a grower and registered as a camp.

[3] 41 interviews taken in housing outside Delano grape area: 13 interviews discounted because interviewer's understanding of Spanish was inadequate.

TABLE NO. 6.—NUMBER AND PERCENTAGE OF MEXICAN-DESCENT INTERVIEW FORMS TABULATED, BY GREEN CARD STATUS, IN AND OUT CAMP

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Green card	44	65.7	30	55.6	74	61.2
Not green card	23	34.3	24	44.4	47	38.8
Total	67	100.0	54	100.0	121	100.0

TABLE NO. 7.—MEXICAN-DESCENT GREEN CARDS BY DATE OF ENTRY OR LAST REENTRY INTO UNITED STATES, NUMBER AND PERCENTAGE OF TOTAL MEXICAN-DESCENT FORMS TABULATED, IN AND OUT CAMP

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Total domestic and green card Mexican-descent forms tabulated	[1] 65	100.0	54	100.0	119	100.0
Mexican-descent green cards tabulated, by date of entry or last reentry:						
1968	28	43.1	15	27.8	43	36.1
1967	2	3.1	4	7.4	6	5.0
1966	2	3.1	1	1.9	3	2.5
1965–60	5	7.7	6	11.1	11	9.2
1959 or before	5	7.7	4	7.4	9	7.6
Total	[1] 42	64.6	30	55.6	72	60.5

[1] Discounts 2 green card holders who did not state when they had crossed the border.

TABLE NO. 8.—MEXICAN-DESCENT GREEN CARDS ENTERING UNITED STATES IN 1967 OR 1968, BY ALLEGED LENGTH OF STAY IN MEXICO

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Total domestic and green card Mexican-descent forms tabulated	[1] 63	100.0	54	100.0	117	100.0
Total green cards entering or reentering United States since January 1967	[1] 28	44.4	19	35.2	47	40.2
Allegedly immigrated	2	3.2	0	------------	2	1.7
Frequent border crosser	1	1.6	1	1.9	2	1.7
Length of stay in Mexico prior to reentry since January 1967:						
Less than 2 weeks	4	6.3	6	11.1	10	8.5
2 to 4 weeks	1	1.6	2	3.7	3	2.6
1 month or more	3	4.8	3	5.6	6	5.1
2 months or more	2	3.2	1	1.9	3	2.6
3 months or more	4	6.3	1	1.9	5	4.3
4 months or more	2	3.2	2	3.7	4	3.4
5 months or more	5	7.9	2	3.7	7	6.0
6 months or more	2	3.4	0	------------	2	1.7
7 months to 1 year	2	3.2	1	1.9	3	2.6

[1] Discounts 2 green cards who had crossed the border since January 1967 but did not state the amount of time spent in Mexico prior to entering/reentering the United States.

APPENDIX D: MISCELLANEOUS DATA

The following information, gathered in the course of this research project, is included here because the author feels that this data is necessary to an informed evaluation of the Delano labor dispute and may not be easily accessible to the casual observer. The material presented below is limited to the factual basis for statements contained in *The Delano Grape Story from the Grower's View*, a widely-distributed pamphlet published by the Delano Growers' South Central Farmers Committee. No attempt is made here to speak to the value judgments held by the growers, whose clear-cut hostility to UFWOC is easily recognizable throughout the tract. The data presented below is focused on migrancy and wages, two of the issues which are frequently puzzling to the uninitiated reader.

I.

The degree to which the Delano Table Grape harvest force has its roots in the Delano area is a subject of much controversy and confusion. As growers point out, migrant workers are more difficult to organize because they don't stay in one place long enough for convenient recruiting. *The Delano Grape Story* makes the claim that the Delano harvest is regularly picked by a "well-settled, non-migrant work force". How stable is the work force at the struck Delano ranches? We shall investigate this question with regard to: (a) migrancy, (b) the turn-over rate at Delano grape ranches and (c) the degree to which year-round employment is provided by Delano grape ranches.

A. Migrancy.—According to the growers, "approximately 90% of the more than 5,000 pickers hired at the peak of the harvest in Delano are residents of the area". The basis for this statement? *The Delano Grape Story* elaborates:

"Payroll records provide the proof. A typical payroll, for example, reveals that 70% of the growers' employees in 1967 lived in Delano, 13% in McFarland, 6% in Bakersfield, 1% in Richgrove, and 10% with home addresses outside of the immediate living or commuting area."

It must be noted that payroll records cited do not provide adequate proof for the growers' contention. The addresses listed on payroll records are *mailing* addresses, not *home* addresses as the growers claim. Examination of the payroll cited above, for example, showed that nearly one-third of the local addresses were Post Office Boxes, not residences. Moreover, the payroll cited is not in fact "typical" of Delano growers: Although more than 40% of the workers employed by Delano growers at peak harvest live in labor camps owned or operated by growers, the rancher whose payroll is cited is one of the few growers who does not provide housing for temporary workers. In view of the fact that he has no labor camps, it is to be expected that the workers employed at his ranch, which lies just outside Delano, might live in the Delano vicinity during the time that they work for him.

Field study conducted in the Delano vicinity during the summer of 1968 does not substantiate growers' claims that 90% of their workers are permanent residents of the Delano area.

Out of 206 Mexican-descent and Filipino grape workers employed on Delano ranches only 66 said they had worked and lived only in the Delano vicinity during the last two seasons; 72 said they had worked or lived in one other area outside the daily commuting range; and 68 listed two or more areas.[1] These figures confirm those of a study, conducted in Kern County before the strike began, which showed that approximately 60% of the grape workers were migrants.[2]

B. Turn-over Rate.—The Delano Grape Story claims that "more than 5,000 grape workers have regularly picked the crops in fields that are supposed to be struck." In view of numerous eye-witness accounts to the contrary, this statement must be examined carefully. Are the pickers presently employed the same people who were working for the growers when the strike began? Out of 194 workers interviewed in 34 grower-owned or grower-operated labor camps in the Delano vicinity during the 1968 harvest, 111 (57%) were in their first year with their present employer; 140 (72%) had not worked for their present employer prior to 1966; only 30 (16%) had worked for their present employer—either continually or on a seasonal basis—for more than five years. Among the recent entrants to California's struck vineyards were 17 Filipinos who had begun field work in the U.S. since 1966, three Korean college students working for the summer under special work permits which supplement their student visas, in addition to several Arabians and Puerto Ricans.

This high turn-over rate is particularly significant when one considers the growers' claim that their workers already exercise what the growers term "grass-roots collective bargaining power." According to *The Delano Grape Story*, growers meet often with their workers to discuss wages, working conditions and grievances. The manner in which growers resolve workers' complaints through "grass-roots collective bargaining" is demonstrated by the fact that more than half of the workers interviewed in growers' camps had never worked for their current employer before 1968. Many of the pickers interviewed did not even know the name of the grower by whom they were employed; they only knew the name of their crew-boss or supervisor.

C. Year-round Employment.—"Between harvests," says *The Delano Grape Story*, "Delano growers employ approximately 2,500 workers in such tasks as pruning, irrigating, cultivating, etc. . . . For many—mostly family heads—Delano vineyards provide almost year-round employment." Weekly figures on farm labor in California show that employment in table grapes is far less consistent than growers' statements would indicate. According to reports filed by the Kern County Farm Labor Service of the State Department of Employment, personnel requirements for table grapes in Kern County during the 1967–68 season fluctuated in the following manner:[3]

Dec. 2, 1967: 200 workers.
Dec. 18–Jan. 27: Pruning and tying plants—3,200 workers peak requirement.
Feb. 24, 1968: 200 workers.
March 30, 1968: 0 workers.
May 13–June 1: Thinning and gridling vines—3,500 workers peak requirement.
July 13, 1968: 800 workers.
Aug. 7–Sept. 2: Harvest—5,000 workers needed at peak.

According to Metzler, in 1961 grape workers in Kern County worked 119 days out of the year; full employment would be 250 days.[4]

II.

The earnings of the average grape worker will vary with the type of work and the labor supply available. According to one payroll described by growers as "typical," the average hourly 1966 harvest wage was $2.19. The average for the periods when work was available during the remaining nine months of the year was $1.57 per hour. (These figures indicate that if a grape worker in the

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[1] If the figures listed above are weighted to take into account the ratio between workers living in labor camps and workers living in communities in the Delano vicinity, 46% listed no other areas lived or worked in during the past two seasons; 40% listed one other area; 14% listed two or more areas. The data gathered for this study indicates that if questions concerning other areas lived or worked in had been stressed by interviewers, the percentage of workers listing other areas would have been significantly higher.

[2] William H. Metzler, *Technological Change and Farm Labor Use, Kern County, California, 1961,* (Berkeley: Giannini Foundation, 1964), Pt. I, pp. 38, 40, 90; Pt. II, p. 46.

[3] *Weekly Farm Labor Report,* #881–A.

[4] Metzler, *op. cit.,* Pt. II, p. 27.

Delano area worked twelve full weeks at harvest rates and were fortunate enough to find work in the vineyards for three-quarters of the remainder of the year, his annual income would still fall below $3,000.—)

The Delano growers boast that during the 1967 season more experienced pickers earned $2.50 and more per hour. It should be remembered that when growers cite rates of pay, they are usually speaking of their best workers on the best days of the peak harvest. Because picking is conducted on a piece-rate basis, harvest wages vary widely and most workers earn far less than the optimum figure. By comparison, during August 1968 the average industrial worker in California earned $3.46 per hour.[1]

Although the average earnings of California farm workers—including Delano grape pickers—are higher than those of farm workers in most other states, the wages paid by California farmers leave their workers almost at the bottom of the economic and social ladder, below everyone but the more destitute farm workers in other states. According to a 1963 state report,[2] California's agricultural workers "remain among the most poorly paid, poorly fed and poorly housed California citizens". Moreover, the gap between the farm workers and the rest of society is widening: In 1948, the average California farm worker earned 62% of the hourly wage received by his counterpart in manufacturing. In 1965 average farm worker hourly earnings were 46% of the wage earned by the average worker in manufacturing.[3]

According to *The Delano Grape Story*, one reason that growers oppose unionization is that labor prices must be kept down in order to compete with increasing grape imports from South America. Official figures on U.S. imports do not substantiate the growers' case: Over the past three decades, grape imports have never amounted to more than one per cent of domestic production.[4] Furthermore, U.S. grape imports for fiscal 1967 were slightly *below* the 1965–67 three-year average and grape imports from South America *declined* in each of those years.[5]

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[1] *Los Angeles Times*, Oct. 14, 1968, pt. II, p. 6.

[2] *Governor's Advisory Commission on Housing Problems* (Sacramento, State of California, 1963).

[3] U.S. Department of Agriculture, Human Resources Division; U.S. Department of Labor, Bulletin No. 1370–5. Cited in Correspondence from the Special Assistant to the Director, Bureau of Labor Standards, U.S. Department of Labor, Oct. 29, 1968.

[4] U.S., Federal-State Market News Service, *Grapes, Raisins, Wine, 1966 Season* (San Francisco, 1968), p. 75. Five-year averages for grape imports as percentage of total domestic production:

1936–40, 0.7%.
1941–45, 0.1%.
1946–50, 0.4%.
1951–55, 0.7%.
1956–60, 0.5%.
1961–65, 0.7%.

[5] U.S. Bureau of the Census, *U.S. Imports, TSUSA Commodity by Country,* annual rept. no. FT 246 (Washington: Government Printing Office, 1965–1967).

The U.S. imported 1,430,009 cu. ft. of grapes in 1967, compared to a 1965–67 three-year average of 1,437,680 cu. ft. Imports from South America totalled 642,861 cu. ft. in 1965, compared to 592,704 cu. ft. in 1967.

[From: Case Western Reserve Journal of International Law]

COMMENT

The Amiable Fiction—Alien Commuters Under Our Immigration Laws

Charles Gordon

THE ALIEN COMMUTER'S STATUS is a device of convenience, designed to cope with an anomalous situation under the immigration laws. Since 1924 those laws have classified entrant aliens as nonimmigrants (who enter for temporary stay) and immigrants (who enter for permanent residence).[1] Soon after the enactment of the 1924 Immigration Act[2] it was discovered that those classifications did not adequately deal with the situation of aliens in adjacent countries who commuted daily across the border to jobs in the United States, usually returning to their "foreign" homes each night.

In 1927 the Supreme Court ruled that a nonimmigrant could not accept employment in the United States.[3] The impact of this ruling threatened the jobs of thousands of commuting aliens, with anticipated dislocation in the economy of many border communities and in our friendly, reciprocal intercourse with adjacent countries. To avert this potential embarrassment and disruption, the special commuter status was established by administrative regulation.[4] Aliens residing in adjacent countries who had stable jobs in this country

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[*] The views expressed in this article are the author's and do not necessarily represent the views of the Department of Justice.

[1] Immigration and Nationality Act, § 101(a)(15), 8 U.S.C. § 1101(a)(15) (1964).

[2] Act of May 26, 1924, ch. 190, 43 Stat. 153.

[3] Karnuth v. Albro, 279 U.S. 231 (1929).

[4] The history and development of the commuter practice, including a description of the regulation inaugurating it, is discussed in Matter of L., 4 I. & N. Dec. 454 (1951); Matter of M.D.S., 8 I. & N. Dec. 209 (1958); House Judiciary Comm., Subcomm. No. 1, 88th Cong., 1st Sess., Study of Population and Immigration Problems, Special Series No. 11 (G.P.O. 1963). The commuter concept is not now recited in the administrative regulations. *See* note 8 *infra.*

were admitted as immigrants, ostensibly for permanent residence. They were thus able to continue their employment in this country and to return to their foreign homes each night by exhibiting a border crossing card attesting their immigrant status.[5] In recent years the identifying document has been the Alien Registration Receipt Card (Form I-151), popularly referred to as the "green card," which recognizes the bearer's lawful admission to the United States and is acceptable as a reentry document for lawful residents returning from a temporary absence abroad not exceeding 1 year.[6] Consequently the alien commuters are often known as "green carders," but this designation is misleading, since Form I-151 is issued to all aliens who have been lawfully admitted to the United States for permanent residence[7] — the majority of whom actually reside in the United States.

Although the commuter status has never specifically been authorized by statute, it has been sanctioned by administrative interpretation and practice in the ensuing 41 years.[8] Moreover, this status was noted with apparent approval in the comprehensive report of the Senate Judiciary Committee which preceded enactment of the basic 1952 recodification of the immigration laws.[9] The 1952 Act defines lawful admission for permanent residence as "the status of having been lawfully accorded the *privilege* of residing permanently in the United States as an immigrant."[10] Under the administrative reading of this language, an alien commuter is recognized as having that privilege even if he has not actually established residence in the United States. The administrative authorities have found that Congress recognized and approved the commuter practice, at least implicitly, in the 1952 Act.[11] They have found nothing in the far-reaching revision of the statute in 1965[12] to indicate that Congress was dissatisfied with the administrative practice or wished to change it.

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[5] Since the commuter status depends on continued employment in the United States, it has been decreed that interruption of such employment for a period of 6 months will terminate the status, unless the interruption was caused by uncontrollable circumstances, such as serious illness, pregnancy, or disabling injury. Matter of M.D.S., 8 I. & N. Dec. 209 (1958). *Cf.* Matter of L., 8 I. & N. Dec. 643 (1960) (never obtained job in United States before pregnancy); Matter of Gerhard, 12 I. & N. Dec. ____ (Int. Dec. No. 1823, 1967) (gave up job, but was reemployed within 6 months).

[6] *See* 8 C.F.R. § 211.1(b) (1968). An amusing sidelight is that in recent years the Form I-151 has been blue and not green. Yet the popular usage is hard to change, and the holders are generally still called "green carders."

[7] 8 C.F.R. § 264.1(b) (1968).

[8] Indeed, the commuter concept has not been explicitly recited in the administrative regulations for many years, but has been supported by administrative practice and adjudications. *See* Matter of L., 4 I. & N. Dec. 454 (1951); Matter of M.D.S., 8 I. & N. Dec. 209 (1958).

[9] S. REP. NO. 1515, 81st Cong., 2d Sess. 535 (1950) (A resident alien's border crossing card may be issued to "an alien who has been admitted for lawful permanent residence but who resides in foreign contiguous territory and is employed in the United States, the so-called commuter."). *See also* S. REP. NO. 1137, 82d Cong., 2d Sess. 4 (1952); H.R. REP. NO. 1365, 82d Cong., 2d Sess. 32 (1952).

[10] Immigration and Nationality Act, § 101(a)(2), 8 U.S.C. § 1101(a)(20) (1964) (emphasis added).

Throughout most of its 40-year history the alien commuter program has encountered little dissent. However, opposition has developed in recent years, particularly from labor organizations operating in the regions adjacent to the Mexican border. Opponents of the program contend that alien commuters from Mexico, living in a country with lower living standards than the United States, unfairly depreciate wages and working conditions in this country. Moreover, it has been contended that such commuters impede the unionization efforts of American workers.[13] It should be noted that in recent years there have been no criticisms of the operation of the commuter program along the Canadian border, since the standards of living on both sides of the Canadian border are reasonably comparable and the affected industries on the American side are generally unionized.

In its inception the commuter program dealt with the so-called "daily" commuter, who usually returned to his home across the border each night. In the past few years there has been a large influx of "seasonal" workers who come to this country for agricultural work, follow the crops during the growing and harvesting seasons, and then return to their homes in Mexico after a stay of several months in the United States. The major rise in number and importance of the seasonal commuters occurred after the termination in 1964 of the "bracero" program, under which many thousands of Mexican nationals were imported each year for temporary employment in the United States.[14] In January 1966 there were 53,329 daily commuters, of whom 42,641 entered from Mexico, and the balance from Canada.[15] The number of seasonal commuters has never been definitely ascertained, and it is currently being tabulated by the Immigration and Naturalization Service.

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[11] Matter of H.O., 5 I. & N. Dec. 716 (1954); Matter of M.D.S., 8 I. & N. Dec. 209 (1958).

[12] Act of Oct. 3, 1965, 79 Stat. 911.

[13] SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, S. REP. NO. 1006, 90th Cong., 2d Sess. 99-109, 111-30 (1968).

[14] *See* 1 GORDON & ROSENFIELD, IMMIGRATION LAW AND PROCEDURE § 6.9 (rev. ed. 1966), which points out that the bracero program operated for a number of years pursuant to specific statutory and treaty arrangements for the importation of temporary agricultural workers from Mexico. The bracero differed from the commuter in that he was admitted temporarily, while the commuter has attained a lawful admission for permanent residence.

In an effort to deal with some of the alleged abuses in the alien commuter program, the Department of Justice in 1967 promulgated a regulation prohibiting the entry of alien commuters coming to accept employment at a plant where the Secretary of Labor has certified that a labor dispute exists.[16] Labor spokesmen have urged that further measures be taken, including the imposition of a requirement that alien commuters be subject to the present statutory mandates[17] which preclude the entry of most immigrants unless they obtain a certification from the Secretary of Labor that their prospective employment will not adversely affect American labor interests.[18] However, under explicit terms the "labor certification" requirements of the statute are inapplicable to returning lawful residents,[19] and it has been the administrative view that since alien commuters are regarded as returning lawful residents the labor certification requirements cannot be applied to them unless the statute is changed.[20] A bill which would require alien commuters to obtain labor certifications every 6 months has been introduced by Senator Edward F. Kennedy and Representative Michael A. Feighan, but has not yet been enacted.[21]

There have been a number of court challenges to various aspects of the commuter program, none of which arrived at a definitive resolution. The first of these was *Amalgamated Meat Cutters v. Rogers*,[22] which considered the effect of a labor certification issued during a strike at the Peyton Packing Co. of El Paso, Texas. The court declined to regard alien commuters as returning lawful permanent residents and found them barred from reentry under the terms of the Secretary of Labor's certification. The government was prepared to challenge this ruling on appeal, but the strike was settled and the case became moot.

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[15] Survey by Immigration and Naturalization Service, reproduced in SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, *supra* note 13, at 114-15.

[16] 8 C.F.R. § 211.1(b)(1), *as amended*, 32 Fed. Reg. 8378 (1967).

[17] Immigration and Nationality Act, 8 U.S.C. § 1182(a)(14) (1964).

[18] *See* Gooch v. Clark, Civ. No. 49500 (N.D. Cal. 1968).

[19] *Id.*

[20] *See id.* and Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114 (D.D.C. 1960).

[21] S. 1694 and H.R. 9505, 91st Cong., 1st Sess. (1969).

[22] 186 F. Supp. 114 (D.D.C. 1960).

A broader challenge to the legality of the entire commuter program, brought by a union and a number of individuals, was unsuccessful in *Texas State AFL-CIO v. Kennedy*.[23] However, the court's ruling was premised on the narrow ground that plaintiffs lacked legal standing to sue and did not adjudicate the merits. While limiting its holding to this technical ground, a lack of sympathy with the litigation seems manifest in the following excerpt from the court's opinion:

> The present case involves the rights of many thousands of human beings to continued employment in this country. Those persons are entitled to have their status and their rights adjudicated on the particular facts of their own cases, the circumstances of their entry, the representations made to them, and the nature of their own conduct, and any other factors which might reasonably be urged on their behalf. . . . Certainly it would be most unjust to allow a labor organization and its members to attack the status of many thousands of aliens — not even naming them as individual defendants — with the aim of dislodging them from their jobs, so that those jobs might then perhaps be obtained for union members.[24]

In 1968 another lawsuit, arising out of a strike by agricultural workers in California, was brought to challenge the validity of the regulation precluding the entry of "green card" commuters for employment at an establishment where a labor dispute had been certified.[25] In effect, this lawsuit entailed an attempt to assert that the alien commuter had an unassailable right to entry, which could not be restricted by the Attorney General's regulation. Again the merits were not resolved, and the suit was dismissed on the ground that plaintiffs (a grower and some individuals against whom deportation proceedings were pending) lacked legal standing to bring the litigation.[26] Finally, another lawsuit, brought by two individual plaintiffs on behalf of all similarly affected, once more challenges the legality of the entire commuter program.[27] The government is again contending that the plaintiffs lack legal standing to sue and the court has not yet announced its decision. Of course, a dismissal on this ground would leave the merits still unresolved.

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[23] 330 F.2d 217 (D.C. Cir.), *cert. denied*, 379 U.S. 826 (1964).

[24] 330 F.2d at 219. The court also found that the *Amalgamated Meat Cutters* case, *supra* note 20, "is not persuasive authority for the maintenance of suits of the present sort."

[25] Cermeno-Cerna v. Farrell, 291 F. Supp. 521 (C.D. Cal. 1968).

[26] *Id.* at 530. The corporate plaintiff has appealed from the dismissal of its suit.

[27] Gooch v. Clark, Civ. No. 49500 (N.D. Cal. 1968).

At the present juncture, the legality of the commuter program has not been definitively passed upon by any court.

The status of the alien commuter has been described as an "amiable fiction."[28] It has been a useful administrative device, continuing for more than 40 years with apparent congressional approval, to cope with a practical situation which does not fit precisely into conventional molds. Changing needs and problems have generated discussion of the desirability of continuing this program in its present form.[29] Any consideration of possible changes would necessarily have to take into account the interests of the many thousands of aliens who have been employed in reliance on this program, often for many years;[30] the need to safeguard American labor; the effect on our friendly relations with neighboring countries;[31] and the effect on the industry and commerce of the border communities in the United States. The assessment and resolution of these competing interests is a matter of national policy, to be decided by Congress. It is unlikely that there will be any significant changes in the administrative approach to the commuter problem. As I have noted, proposals to end or modify the program have been rejected by the administrators on the ground that they have been enforcing the will of Congress. Consequently, it may be anticipated that unless changes are enacted by Congress or required by the courts, the alien commuter program will continue to operate as it has for the past 40 years. Thus, if changes are to be made, they apparently will have to be accomplished by new legislation. Since we are dealing essentially with legislative purpose, it seems desirable that this purpose be clearly articulated.

There are several possible alternatives Congress might pursue. The first is to enact no new legislation, which would leave the commuter program untouched. The second is to terminate the program forthwith — a prospect not favored by many, in the light of its patently disruptive effect on border communities and on the affected individuals. The third alternative is to require the commuters to obtain periodic labor certifications, a solution proposed in Senator Kennedy's bill[32] and favored by labor organizations and by the Department of Labor. Finally, there is a proposal by two members of the Select Commission on Western Hemisphere Immigration[33] that the present commuter program be phased out within a specified period of years, that thereafter lawful admission for permanent residence include a commitment to establish a residence in the United States, and that special work permits be issued to nonresidents under appropriate safeguards protecting American labor to satisfy the needs of the border communities. This final proposal has a number of desirable features. First, it deals fairly and humanely with the many thousands of commuters who have relied on the present practice and gives them a reasonable period of time to make other employment arrangements or to establish residence in the United States, if they are so disposed. Second, it takes into account the needs of the border communities and avoids disruption of their economies and of friendly relations with neighboring countries. Finally, it makes adequate provision for safeguarding American labor interests. This proposal may well suggest a sound and enlightened solution for the commuter problem.

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[28] 1 GORDON & ROSENFIELD, *supra* note 14, § 2.8b; Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114, 119 (D.D.C. 1960). However, this fiction has not been deemed to qualify a commuter for naturalization benefits, which depend on actual residence in the United States for prescribed periods, following lawful admission for permanent residence. *In re* Barron, 26 F.2d 106 (E.D. Mich. 1928); Petition of Wright, 42 F. Supp. 306 (E.D. Mich. 1941). *See also* Immigration and Nationality Act, §§ 101(a)(33), 316(a), 8 U.S.C. §§ 1101(a), 1427(a) (1964).

[29] *See, e.g.*, SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, *supra* note 13, at 99-109, 111-30; Rummel, *Current Developments in Farm Labor Law*, 19 HASTINGS L.J. 371 (1968).

[30] *See* note 24 *supra* & accompanying text.

[31] In affidavits submitted to the court in Texas State AFL-CIO v. Kennedy, 330 F.2d 217 (D.C. Cir.), *cert. denied*, 379 U.S. 826 (1964), and in Gooch v. Clark Civ. No. 49500 (N.D. Cal. 1968), the Secretary of State asserted that termination of the alien commuter program would have an adverse effect on the foreign relations of the United States.

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[32] *See* S. 2790, 90th Cong., 2d Sess. (1968), now co-sponsored in the 91st Congress by Representative Feighan and others. *See* note 21 *supra.*

[33] The report of this Commission (*see* note 13 *supra*) made no specific recommendations. After publication of the report, a letter dated July 22, 1968, and signed by Richard M. Scammon, Chairman, and Stanley H. Ruttenberg, a Commission member, was addressed to President Johnson, and presented the recommendations discussed in the text.

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

JUAN CERMENO-CERNA, ET AL., PLAINTIFFS,

v.

RAYMOND F. FARRELL, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS

CIVIL NO. 68–403–R, MEMORANDUM OF DECISION

Plaintiffs, including Giumarra Vineyards Corporation (hereafter "Giumarra"), filed their complaints March 12, 1968, seeking a declaration that the enactment of 8 C.F.R. 211.1(b) (1)[1] is "arbitrary, an abuse of discretion, and contrary to the Constitution and laws of the United States" and that deportation proceedings commenced against plaintiffs Juan Cermeno-Cerna, Juan de Jesus Cermeno-Ruiz, Benjamin Zermeno-Lerna, Jose M. Jasso-Ramos, Candelario Acosta-Puente, Jose R. Santillanes-Diaz, Nicholas Ramirez-Mora, Jesus Valdez-Murguia, Juan Manuel Jasso-Juarez and Efren Ramirez-Rojas (hereafter collectively called "individual plaintiffs") are "void and contrary to the Constitution and laws of the United States."

Amending their complaint on July 5, 1968, plaintiffs added to their prayer for relief a request for a temporary and permanent injunction restraining defendants from doing any act in regard to the operation, enforcement or execution of the challenged regulation and further alleged a class action "in behalf of themselves and all other immigrants lawfully admitted for residence" and a class of owners of certain places of employment.

The matter proceeded to trial upon the amended complaint and the answer of defendants raising the following issues:

1. Jurisdiction of the Court over the subject matter of the action;
2. Failure of individual plaintiffs to exhaust their administrative remedies; and
3. Standing of individual plaintiffs and Giumarra to either challenge the validity of 8 C.F.R. 211.1(b) (1) or to maintain the action.

At trial no evidence was presented upon the issue regarding the maintenance of a class action and therefore that question is moot. In any event, resolution of that question is not necessary to a determination of the central issues presented to the Court for decision.

JURISDICTION OF THE COURT OVER THE SUBJECT MATTER OF THE ACTION

(*a*) *Jurisdiction to enjoin deportation proceedings.*—Individual plaintiffs are each now the subject of deportation proceedings instituted pursuant to Section 242(b) of the Immigration and Nationality Act, 8 U.S.C. § 1252(b).[2] Within that

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[1] For the purposes of this action, plaintiffs question only the amendment made June 7, 1967, which added the following language:

"When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form I–151 shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for and seeks reentry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination."

Further reference to 8 C.F.R. 211.1(b) in this opinion shall be limited to this language unless specifically indicated otherwise.

[2] 8 U.S.C. § 1252(b) provides:

"(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including order of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-section is found the "sole and exclusive procedure for determining the deportability of an alien."

Judicial review of deportation proceedings is limited to those procedures prescribed in 5 U.S.C. 701 et seq. excepting those specific provisions of 8 U.S.C. § 1105(a) the most pertinent distinction providing a six (6) months statute of limitations for filing of the petition for review from a final order of deportation.

A review of the statutory and case law clearly compels the determination that the Court is without jurisdiction to stay these deportation proceedings. This should not be construed to indicate that this Court would be without jurisdiction to stay execution of a final order of deportation pending judicial review under proper circumstances.

(*b*) *Jurisdiction to determine validity of regulations.*—5 U.S.C. § 704[3] provides for judicial review of agency actions where there is "no other adequate remedy in a court." Individual plaintiffs have been arrested and placed upon bond conditioned upon their refraining from returning to the employment of their employer at the time of their arrest. This action was taken in the guise of enforcement of the provisions of the questioned regulation. Being unable to attack this procedure in any other forum, it would appear that this Court has jurisdiction to determine the validity of the regulation as requested here.

Certainly the administrative proceedings cannot provide for a determination of the validity of 8 C.F.R. 211.1(b)(1). The Special Inquiry Officer can make only a determination of whether or not the regulation is applicable to the factual situation presented by each individual plaintiff in a deportation hearing, and upon finding the facts, apply the regulation regardless of its validity.

Considering the type of review requested herein, the Supreme Court, in *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 140–41 (1967), says:

"The Administrative Procedure Act provides specifically not only for review of '[a]gency action made reviewable by statute' but also for review of 'final agency action for which there is no other adequate remedy in a court,' 5 U.S.C. § 704. The legislative material elucidating that seminal act manifests a congressional intention that it cover a broad spectrum of administrative actions,

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examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings.

"No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that—

> "(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;
>
> "(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;
>
> "(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and
>
> "(4) no decision of deportability shall be valid unless it is based upon reasonable substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this chapter, or of any other law or treaty, the decision of the Attorney General shall be final. In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraphs (4)–(7), (11), (12), (14)–(17), or (18) of section 1251(a) of this title. If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter."

[3] 5 U.S.C. § 704 provides:

"Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority."

and this Court has echoed that theme by noting that the Administrative Procedure Act's 'generous review provisions' must be given a 'hospitable' interpretation. *Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 51; see *United States* v. *Interstate Commerce Comm'n* 337 U.S. 426, 433–435; *Brownell* v. *Tom We Shung*, supra; *Heikkila* v. *Barber*, supra, at 379–380, the Court held that only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review."

We are faced here only with the legal question of the scope of the delegated power of the Attorney General,[4] not with the Court predetermining a question which could be raised *at a deportation hearing*. There is no procedure for questioning the scope of the delegated power of the Attorney General within the deportation process. Plaintiffs' only adequate or effective relief can be granted in this Court. See *Leedom* v. *Kyne*, 358 U.S. 184 (1958). Under these circumstances, this Court has jurisdiction, both under the Administrative Procedure Act, 5 U.S.C. § § 701–706, and in the exercise of its discretionary powers under the Declaratory Judgement Act, 28 U.S.C. § 2201.

VALIDITY OF 8 C.F.R. 211.1 (b) (1)

The basic considerations for determining the validity of an administrative regulation are articulated by the Supreme Court in *Boske* v. *Comingore*, 177 U.S. 459, 470 (1900):

> "[A] regulation . . . should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not all appropriate to the end specified in the act of Congress."

Plaintiffs complain that there can be found no authority for the Attorney General to administratively create a new class of alien for admission to the United States. Defendants contend that the Attorney General is given broad authority to promulgate the regulation challenged here by Section 103(a) of the Immigration and Nationality Act, 8 U.S.C. § 1103(a). Defendants further suggest that specific authority can be found in Section 211(b) of the Immigration and Nationality Act, 8 U.S.C. § 1181(b).

8 U.S.C. § 1103(a) provides in part:

"The Attorney General shall be charged with the administration and enforcement of . . . all . . . laws relating to the immigration and naturalization of aliens. . . . He shall establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of this chapter."

The power given the Attorney General is broad within the delegated authority given by Congress. But such power must be exercised in promulgating regulations that carry out the statutory scheme of admission or readmission of aliens. It must also be exercised within the limits of procedural and substantive due process.

8 U.S.C. § 1181(b) provides:

"Notwithstanding the provisions of section 1182(a)(20) of this title in such cases or in such classes of cases and under such conditions as may be by regulation prescribed, returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation."[5]

The power of Congress to legislate in connection with immigration and naturalization of aliens is plenary. Congress may in the exercise of that power exclude aliens from the United States, impose conditions of entry or reentry, and regulate their conduct and fix their rights while in the United States. Administration of these powers by the Attorney General is not an unconstitutional delegation of power. *U.S. ex rel. Circella* v. *Sahli*, 216 F. 2d 33 (7th Cir. 1954), *cert. denied* 348 U.S. 964 (1955).

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[4] Reference herein to action of the Attorney General includes the acts of each of the defendants herein as his duly delegated representatives.

[5] 8 U.S.C. § 1182(a)(20) provides:

"(20) Except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(a) of this title."

An immigrant to the United States must generally possess a valid unexpired immigrant visa upon any entry to the United States.[6] Excepted from this general requirement are immigrants who qualify pursuant to 8 U.S.C. § 1101(a)(27)(B). This imigrant "lawfully admitted for permanent residence who is returning from a temporary visit abroad"[7] has by regulation of the Attorney General been permitted to use Form I–151 in lieu of an immigrant visa or reentry permit "when returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year." 8 C.F.R. 211.1(b)(1). This determination of documentation as applied to an 1101(a)(27)(B) immigrant is within the specifically delegated power of 211(b) of the Immigration and Nationality Act, 8 U.S.C. § 1181(b). That could be said to end the inquiry here.

But plaintiffs claim that the challenged portion of 8 C.F.R. 211.1(b)(1) is discriminatory in creating a new class of immigrant, *i.e.*, an 1101(a)(27)(B) immigrant who works for an employer certified by the Secretary of Labor as being involved in a labor dispute. In response, defendants claim that the challenged regulation is not being interpreted to apply to an 1101(a)(27)(B) immigrant and that the regulation must be read against the background of *Rosenberg* v. *Fleuti*, 374 U.S. 449 (1963).

A reading of the challenged portion of 8 C.F.R. 211.1(b)(1) would indicate that it applies to (1) an alien, (2) who has departed from the United States, and (3) seeks reentry from any foreign place, (4) for the primary purpose or intention of accepting or returning to employment, (5) at a place where the Secretary of Labor has determined that a labor dispute exists. The regulation thus classifies returning immigrants as:

1. Those returning to employers not certified by the Secretary of Labor can use their I–151 green card for entry; and
2. Those returning to employers certified by the Secretary of Labor who cannot use their I–151 green card for entry.

Certainly, without more, such a distinction is arbitrary and without rational basis when applied to immigrants admitted for permanent residence to the United States who are exercising a privilege to travel to and from their native land to their adopted one. Such a distinction cannot stand within the rationale of *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). Recognizing that aliens outside the United States cannot complain of a lack of due process or equal protection of the law, it is clear that aliens residing or present within the United States must be afforded both procedural and substantive due process and equal protection. *Galvan* v. *Press*, 347 U.S. 522 (1954).

Defendants urge upon the Court that such a classification is reasonable and authorized by Congress by its enactment of Section 212(a)(14) of the Immigration and Nationality Act 8 U.S.C. § 1182(a)(14).[8] The Court does not read that section, nor does the legislative history[9] support defendants' contention. Congress delegated power to the Attorney General in conjunction with qualification by the Secretary of Labor for initial entry into the United States "for the purpose of performing skilled or unskilled labor." Nowhere is there found support for delegation of a *continuing* concern by the Secretary of Labor or the Attorney General in the field of alien labor controls.

The Court must, where permissible, within constitutional and statutory considerations give viability to an administrative regulation. In such circumstances the interpretation given the regulation by the promulgating authority should be controlling where it can reasonably be applied within the language used.

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[6] See 8 U.S.C. § 1181(a).

[7] These "special immigrants" are issued a Form I–151 generally referred to as a "green card." Each of the individual plaintiffs are green card holders.

[8] 8 U.S.C. § 1182(a)(14) provides:

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title, (other than the parents, spouses, or children or United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title."

[9] 1965 U.S. Code Cong. & Ad. News 3333, 3333–3334, 3342–3343, 3345, 1952 U.S. Code Cong. & Ad. News 1653, 1697–1968, 1 705.

Charles Gordon, General Counsel of the United States Immigration and Naturalization Service, tells the Court that:

"The sole purpose of this regulation was to deal with aliens who have been lawfully admitted to the United States for permanent residence but who actually live in a foreign country and come to the United States periodically to work, and who seek entry into the United States for the purpose of engaging in employment at a place where the Secretary of Labor has certified that a labor dispute exists. The limited impact of the regulation is to restrict the use of the alien registration receipt card (the so-called green card) as a document for entry into the United States by aliens who live in a foreign country."

Counsel for defendants has classified this group as aliens commonly known as "commuters" who hold Form I–151 green cards.

Historically the "commuter" has been classified as the alien holding a Form I–151 green card who has not qualified or is not qualifying by maintaining a permanent residence within the United States. In other words, an alien using a status he has not perfected. Present statutory law would require such an alien to obtain an imigrant visa or reentry permit for each entry into the United States. Since these commuters were largely aliens working in the United States border communities and living in contiguous foreign territory there was created the "amiable fiction" of equating employment with permanent residence. This was done without statutory recognition of such a definition. See *Amalgamated Meat Cutters and Butcher Workmen* v. *Rogers*, 186 F. Supp. 114 (D. Col. 1960). Counsel for defendants advises that this "amiable fiction" is more recently being extended beyond border town employment to seasonal workers staying for longer periods of time. However applied, it remains a "fiction."

Recognizing that "commuters" have no statutory or constitutional status, but entry is at the sufferance of the Attorney General, until Congress acts to determine the status of the "commuter," the Court should not intervene. More particularly since these aliens do not qualify for considerations of due process or equal protection of the law. If found here, they most certainly are entitled and are being afforded procedural due process to determine the legality or illegality of their presence.

In such a context and limiting application of 8 C.F.R. 211.1(b)(1) to "aliens who live in a foreign country," the regulation is valid as an exercise of the generally delegated power of the Attorney General in the enforcement of the immigration laws.

STATUS OF PLAINTIFFS

1. Plaintiff Giumarra Vineyards Corporation

Guimarra is the employer of individual plaintiffs. On July 28, 1967, Robert C. Goodwin, Administrator of the Bureau of Employment Security, United States Department of Labor, pursuant to authority delegated by W. Willard Wirtz, Secretary of Labor, determined that Guimarra was in a "labor dispute involving a work stoppage or layoff of employees."

In *Braude* v. *Wirtz*, 350 F.2d 702, 707–08 (9 Cir. 1965), the Court disposed of a similar claim of status by an employer:

"In our view, appellants have shown neither a legal wrong nor a legal right to be free of the effects they attribute the determinations complained of will have upon their businesses.

* * * * * * *

"We therefore conclude that the growers' allegations are insufficient to show that they have suffered a 'legal wrong' or that they have been 'adversely affected or aggrieved * * * within the meaning of any relevant statute; and that as a necessary result, they are without standing to sue."

The Court having adopted the interpretation of the challenged regulation as applying to "aliens who lives in a foreign country" is led to the conclusion that Guimarra has no standing to complain of the exclusion of aliens from the United States nor to complain of deportation of aliens illegally within the United States.

2. Plaintiffs Juan Cermeno-Cerna, Juan de Jesus Cermeno-Ruiz, Benjamin Zermeno-Lerna, Jose M. Jasso-Ramos, Candelario Acosta-Puente, Jose R. Santillanes-Diaz, Nicolas Ramirez-Mora, Jesus Valdez-Murguia, Juan Manuel Jasso-Juarez and Efren Ramirez-Rojas

This action is brought by these individual plaintiffs pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 1331, 1361, 2201 and the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., 701, et seq.

The evidence as to each of the individual plaintiffs shows that each of them is admitted for permanent residence in the United States and has been issued I–151 green cards. Deportation proceedings have been instituted pursuant to the challenged regulation against each of the individual plaintiffs as the result of their departures from the United States and return to employment at Giumarra. But defendants simultaneously contend that individual plaintiffs have no standing to bring this action. Resolution of that conflict must be made to determine the standing of individual plaintiffs.

To have standing to question the challenged regulations these individual plaintiffs must be persons "suffering legal wrong . . . within the meaning of a relevant statute."[10] *Braude* v. *Wirtz*, supra.

The evidence as presented by each of the individual plaintiffs shows that each have been admitted for permanent residence in the United States and when leaving their residence, either from labor camps supplied by their employers or from rented homes, they left belongings in the United States and in each instance intended to return after a vacation to rest and visit with their families and friends.

The regulation as interpreted by defendants and as approved in this opinion applies to "aliens who live in a foreign country." The evidence shows that each of the individual plaintiffs qualify for inclusion within the provisions of 8 U.S.C. § 1101(a)(27)(B) immigrants. Therefore, individual plaintiffs are not parties who can claim injury "within the meaning of a relevant statute" and thus have no standing to attack the challenged regulation.

Judgment for defendants. This opinion shall be considered as the findings of fact, conclusions of law and judgment.

Let it be entered accordingly.

Dated: August 2, 1968.

MANUEL L. REAL,
U.S. District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

(No. 49500)

JOE GOOCH and RAFAEL BUSTAMENTE, on behalf of themselves and a class of persons similarly situated but too numerous to mention, Plaintiffs,

v.

RAMSEY CLARK, Attorney General of the United States, HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States, and C. W. FULLILOVE, District Director, Immigration and Naturalization Service of the United States, DEFENDANTS.

GEORGE MEANY, President, and WILLIAM F. SCHNITZLER, Secretary-Treasurer for and on behalf of the AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO) and for and on behalf of its affiliates and their members, PLAINTIFFS IN INTERVENTION.

v.

RAMSEY CLARK, Attorney General of the United States, HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States, and C. W. FULLILOVE, District Director, Immigration and Naturalization Service of the United States, DEFENDANTS.

MEMORANDUM OPINION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This is a class action for a writ of mandamus to compel the Attorney General and officials of the Immigration and Naturalization Service to exclude certain non-resident aliens. Jurisdiction is asserted under 5 U.S.C. §§ 702 and 703 and 28 U.S.C. § 1361.

Plaintiffs are domestic farm workers.[1] They claim to be injured by competition from the so-called "alien commuters". The latter are aliens who reside in an adjacent country and enter the United States periodically for purposes of employment, returning thereafter to their places of residence. While each commuter has been made eligible, by the appropriate United States authorities, to establish permanent residence in this country, none has exercised the privilege nor indicated an intention to do so. Based upon the continuing eligibility for permanent residence, each commuter has been allowed entry and reentry into the United States upon presentation of an alien registration receipt card, Form I–151 (the "green card"). This card shows the holder to have been lawfully admitted for permanent residence in the United States.

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[10] 5 U.S.C. § 702.

[1] Certain labor organizations have also been granted permission to intervene as plaintiffs to represent the interests of other domestic workers.

Plaintiffs claim this practice is contrary to the specific language of 8 U.S.C. §§ 1181(b) and 1182(a)(14), and 8 C.F.R. § 211.1(b)(1). They seek a writ of mandamus requiring compliance with those sections as interpreted by plaintiffs. Defendants have moved for summary judgment. After extensive briefing by all parties, the case is ready for decision.

Defendants urge that plaintiffs lack standing to challenge the administrative practice here involved. They rely most heavily on *Texas State AFL–CIO* v. *Kennedy*, 330 F.2d 717 (D.C. Cir. 1964), in which union members challenging the same commuter practice were held to lack standing because "mere economic competition made possible by governmental action (even if allegedly illegal) does not give standing to sue in the courts to restrain such action. *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118 (1939)." 330 F.2d at 219.

The *Texas State* decision may, at an earlier time, have been persuasive authority on the question in this case, but recent decisions of the Supreme Court run counter to its holding. The Supreme Court has expanded the availability of judicial review of administrative. *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), and has laid down guidelines on standing. *Flast* v. *Cohen*, 392 U.S. 83 (1968). Under *Flast*, plaintiffs here plainly have sufficient adverse and personal interest in the outcome of the litigation to assure that the issues will be properly presented in an adversary context.

Perhaps even more important, the Supreme Court has limited the doctrines of *Tennessee Electric Power Co.* v. *TVA* and the other cases relied on by the *Texas State* court. In *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1 (1968), the Supreme Court distinguished that the line of cases, saying: "when the particular statutory provision invoked does reflect a legislative purpose to protect a competitive interest, the injured competitor has standing to require compliance with that provision." 390 U.S. at 6. *See Jaffe, Standing to Secure Judicial Review: Private Actions*, 75 Harv. L. Rev. 255, 266 (1961). In the present case, it is abundantly clear that one of the major purposes of the Immigration Act was to protect American labor against the influx of foreign labor. *Karnuth* v. *U.S.*, 279 U.S. 231, 243 (1929). The 1965 amendments to the Act reflect the same purpose. S. Rep. No. 748, 89th Cong., 1st Sess. (1965), *reprinted in 1965 US. Code Cong. & Admin. News*, 3328–29.

Under the doctrine of *Hardin*, this Court holds that plaintiffs have standing.

The remaining question is whether proper construction of the Act as amended requires exclusion of the "alien commuter" as a matter of law. Defendants frankly concede that no explicit statutory or constitutional provision protects the commuter against exclusion. *Cermeno-Cerna* v. *Farrell*, 291 F. Supp. 521, 529 (C.D. Cal. 1968).[2] Rather defendants rely upon the long practice of the Immigration and Naturalization Service in treating the commuter as a special immigrant defined in 8 U.S.C. § 1101(a)(27)(B) as "an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad."[3] This interpretation by the Service persists and has been unvarying since passage of the Immigration and Nationality Act of 1952. *See* Deposition of Charles Gordon, General Counsel of the Immigration and Naturalization Service, pp. 9–12.

Such classification of the commuter as a special immigrant under § 1101(a)(27)(B) has two effects. It exempts the commuter from the certification requirements for aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor. 8 U.S.C. § 1182(a)(14).[4] It also allows the Attorney General, in his discretion, to utilize the informal documentation provisions of 8 U.S.C. § 1181(b),[5] and to grant the commuted entry upon presentation of his Form I–151 green card.

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[2] For a brief summary of the history of the commuter practice since 1924, *see Amalgamated Meat Cutters & Butcher Workmen of North America, AFL–CIO* v. *Rogers,* 186 F. Supp. 114, 117 (D.D.C. 1960).

[3] 8 U.S.C. § 1101(a)(27) provides in full:

(27) The term "special immigrant" means—

(A) an immigrant who was born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him: *Provided,* That no immigrant visa shall be issued pursuant to this clause until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(14) of this title;

(B) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad. . . .

Plaintiffs challenge the Service's practice on the ground that it is precluded by the 1965 amendments to the Immigration Act. The challenge centers on the change in § 1181(b), which, prior to 1965, provided:

> Notwithstanding the provisions of section 1182(a)(20) of this title . . . *otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily* may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (Emphasis added; for text of § 1182(a)(20), see footnote 4.)

This section was amended in 1965 to read:

> Notwithstanding the provisions of section 1182(a)(20) of this title . . ., *returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible* may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (Emphasis added.)

Plaintiffs urge that the change in wording of the emphasized portions now requires exclusion of the commuter who is not a permanent resident of the United States returning from a temporary visit abroad.

While the amendment is susceptible to that interpretation, it is also susceptible to an interpretation that, by its specific reference to § 1101(a)(27)(B), it tacitly approves the long-standing practice of the Immigration and Naturalization Service. Moreover, Congress had made no changes in the definition of "immigrant" under § 1101(a)(27)(B), and nothing in the legislative history of the 1965 amendments indicates that Congress in any way intended to change or prohibit the commuters' right of entry. In fact, the final Senate Report and Conference Report on the 1965 amendments do not mention the change in § 1181(b) nor its purpose, even in the portion giving a section-by-section analysis of the amendments, *See* S. Rep. No. 748, 89th Cong., 1st Sess. (1965), *reprinted in 1965 U.S. Code Cong. & Admin. News*, 3328, 3342.

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[4] 8 U.S.C. §§ 1182 (a)(14) and (a)(20) provide:

§ 1182.

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * * * *

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a)(6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title;

* * * * * * *

(20) except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(a) of this title. . . .

[5] 8 U.S.C. § 1181 provides:

§ 1181.

(a) Except as provided in subsection (b) of this section no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. . .

(b) Notwithstanding the provisions of section 1182(a)(20) of this title in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

For many years, Congress has been aware of the commuter practice and of the administrative decisions upholding it. There have been Congressional hearings. *see, e.g., Study of Population and Immigration Problems, Special Series No. 11, Before the Subcommittee No. 1 of the House Comm. on the Judiciary*, 88th Cong., 1st Sess. (1963). None of the hearings has resulted in any report adverse to the practice nor in any recommendation to abolish it. This Congressional inaction has special significance in the light of the consistent administrative decisions and the refusal in 1964 by the Court of Appeals for the District of Columbia, in *Texas State*, to declare the practice unlawful.

If Congress wishes to end that practice, it has the power to do so. The issue here is not as to the power of Congress; it is, rather, as to the interpretation to be given an exercise of that power in the 1965 amendments under consideration.

In the light of the long history of the commuter practice, the unvarying administrative interpretation allowing commuter entry, and the potential foreign policy consequences involved in termination,[6] it is hardly reasonable to assume that Congress intended to make such a radical change by an obscure amendment to § 1181(b), not even referred to in any legislative history.

The Court should not attribute to Congress any such casual and off-handed disposition of so important a matter—especially when the language of Congressional amendment can be interpreted consistently with continuation of a long-standing practice of which Congress had full knowledge.

Defendants' motion for summary judgment is granted. Let judgment be entered accordingly.

Dated: June 19, 1969.

——— ———,
Judge.

THE LEGALITY OF THE "COMMUTERS" OR "GREEN-CARD HOLDERS" WORKING IN THE UNITED STATES

(By Philip M. Newman)

It is my intention to review the principles of law that in my opinion apply to the status of the alien who has been issued an Alien Registration Receipt card designated by the Immigration and Naturalization Service as form I–151, who resides outside of the United States and is gainfully employed in the United States. It is a well-known fact that many such aliens are maintaining their true and legal residence outside of the country and are steadily employed in various occupations on a permanent basis in the United States. They cross the borders daily to pursue their employment and return to their established homes in the foreign country. They have been referred to as "commuters" or as "green-card holders". This discussion does not include the status of either the person who has entered the United States under a treaty or agreement with a foreign country or a person admitted specially as a business visitor to engage in a specific and temporary type of business activity or temporary employment.

It is a basic and established principle of law that only aliens who have been lawfully admitted for permanent residence can be gainfully employed in the United States. The only qualification of this principle is the aforementioned aliens who are admitted on a temporary basis pursuant to treaty, agreement, or special permits. It is, therefore, necessary to determine if the commuters to which I now refer have the status of a resident alien in order that they may be lawfully, permanently employed in the United States.

The aliens have at some time or another, been issued immigrants' visas by an American Consul in a foreign country enabling them to enter the United States as residents and theerfore have qualified to seek and pursue any occupation or employment. What happens subsequently is what raises the question of the legality of their status and which is the subject matter of this discussion.

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[6] *See* Affidavit of Dean Rusk, Secretary of State, indicating, *inter alia*, that the practice contributes to friendly relations with Canada and Mexico, that termination would be deleterious to those relations and that economic advantages result from the practice.

In the usual case, after the alien has been properly documented as stated above, he will establish or retain his home in the adjacent foreign country. He may own the property where he resides, his children may go to school in the place where he resides and for all purposes all he does is cross the border to work. By statutes and court decisions, "resident" is considered the principal place of abode, that is a matter of intent to reside, plus physical presence. Black's Law Dictionary defines residence as "A factual place of abode". Title 8 of the Code of Federal Regulations at Section 211.1(b) provides that an unexpired visa should be presented by aliens entering the United States, except when returning to unrelinquished, lawful, permanent residence after a temporary absence abroad not exceeding one year. It follows, therefore, that the alien who has been issued an Alien Registration Receipt card ("green card") is not returning to an unrelinquished, lawful, permanent residence after a temporary absence not exceeding one year because his residence is not in the United States and as a rule he had maintained that residence in a foreign country for a period exceeding one year.

The Immigration and Naturalization Service has established the fiction of the commuter without any statutory authority. Their rationale has been "to equate employment with domicile". This fiction was reviewed at length in the matter of Carmen Burciaga-Salcedo (file A–12690434) decided by the Board of Immigration Appeals May 31, 1966. In that decision, the Board of Appeals concedes the lack of statutory basis for the status of a commuter but accepts it and applies it.

I do not purport to be a sociologist nor an economist, and for that reason I will not extend my discussion into the sociological, economic, or political aspects of this problem. Perhaps contradictorily, I should in passing state that during a discussion I had with a prominent officer of the Immigration and Naturalization Service regarding this matter, we came to the conclusion that from a legal point of view, the commuter program is contrary to law and that the best approach to a humane solution would be for a directive to be issued by the appropriate authority notifying the "green-card holders" or "commuters" that their privileges to enter the country under the present conditions and circumstances would be terminated after a specified reasonable period of time to enable them to lawfully reside within the United States under the conditions of their documents of entry.

An article from the AFL–CIO Federationist, July 1969, follows.)

LOW-WAGE LURES SOUTH OF THE BORDER

(By David T. Lopez)

From the boundless beaches where the Rio Grande joins the Gulf of Mexico at the tip of Texas, our southern border runs up the river, then turns west under New Mexico, Arizona and California, meeting the Pacific near San Diego.

The 1,800-mile-long border area between the United States and Mexico is one of sharp contrasts. There are lush orange groves and arid goat country, deep canyons and flatlands, teeming urban centers and desolate wastelands.

As far back as one cares to go, however, there has been one common denominator for the land and the people of the border; a chronic, pervasive poverty that has joined citizens of both the United States and Mexico in an endless communion of despair.

For generations, the root of the economic problem has been the worker who resides in Mexico, where the living is cheap, but who is allowed by a twisted immigration law to work in the United States.

The Mexican "commuter," as he is known, will work for a little as 35 or 50 cents on hour so he is eagerly sought out by employers while many United States residents are unemployed most of the year.

When a union on the border strikes there is an endless supply of "commuter" strikebreakers, delighted to work at the federal minimum wage.

The "commuter" system made a border city, Laredo, Texas, "the poorest city in the country," according to a national news magazine, and a border county, Starr County, Texas, scene of beatings of striking farm workers by Texas Rangers, the county with the lowest family income in the nation.

Insistent protests by organized labor at local, state and national levels have limited the problem of what the Immigration Service calls the "non-resident alien." But token action was enough to move employers into coming up with an even more insidious and devastating program.

The new plan is known by many names: PRONAF (from the Spanish-language words for National Border Program), or the Border Industrialization Program, or—to the American unions which have seen hundreds of jobs rush across the border—"runaway plants."

Regardless of the name, the program was aptly described by Dr. Ramiro Casso of McAllen, Texas, a physician friendly to the farm workers, as "bringing the mountain to Mohammed."

"They figured they might not be able to keep bringing in cheap labor from Mexico to jobs in this country, so they are taking the jobs out of the country to the cheap labor in Mexico," Dr. Casso said.

In essence, the plan, supported by the governments of both countries, is for American businesses to set up along a zone 12.5 miles deep just across the border in Mexico. The attractions offered are special tax and tariff concessions by Mexico, similar tariff concessions by the United States, and labor at sweat-shop rates.

The cheap-wage attraction is loudly touted by chambers of commerce on both sides of the border.

J. Carl Meyer, executive secretary of the Development Authority for Tucson's Expansion (DATE), boasts, "The Mexican border station at Nogales marks the gateway to an inexhaustible 30-cent-an-hour labor supply." Nogales, on the border, is an hour's drive from Tucson in southern Arizona.

Why would Tucson be so anxious to lure plants to Mexico? The answer is what promoters of the runaway industries call the "twin-plant concept." Supposedly, this calls for the company to set up a plant on the United States side of the border to be the "twin" of the one in Mexico.

Actually, the "twins" on the U.S. side, if and when they are established, turn out at best to resemble poor cousins. They employ far fewer workers and are designed mainly to justify a special import tariff on the Mexican-manufactured goods, which supposedly are to be "finished" in this country.

An example of the concept are the "twins" of Transitron, an electronics component manufacturer, employing about 75 in Laredo and 1,500 in Nuevo Laredo, Mexico.

"Finishing" could mean little more than pasting on a label. Many plants on the U.S. side hire Mexican residents anyway. Attempts to organize are met by threats to move the rest of the operation to Mexico. And for every job supposedly established on the American side, at least 10 jobs are being set up in Mexico and often at the direct expense of American workers.

The United Rubber Workers represent employes of Mattel, the toy manufacturer, at two plants in the Los Angeles area. Since Mattel opened a toy plant in Mexicali in 1967, some 820 union workers at the City of Industry plant have lost their jobs, and the Hawthorne operation has been similarly affected.

The losses can be documented by shift and job classification, but a Mattel executive denied to the Los Angeles Times that a single job has been lost. Other less restrained entrepreneurs talk about the program creating "new jobs" for the United States.

More revealing, however, are statements made by officers of a company that specializes in subcontracting electronic assembly work in Tijuana, Mexico, near San Diego.

Enrique Mier y Teran, manager of IMEC, S.A., the Mexican branch of International Manufacturing, Electronics and Consulting Corp., puts it plainly: "I believe tremendously that the future of Tijuana lies in selling its labor."

At the Beverly Hills offices of IMEC, a division of the Republic Corp. conglomerate, R. Lee Hill, operations manager, said: "We should ship $800,000 to $1,000,000 in labor (from Tijuana) in 1969."

Trinkets sold to tourists in border markets may bear an imprint, "Made in Mexico," but the products of the special industry program not only are not labeled, but often are even hard to trace. Portable television sets sold by Sears, Roebuck and Co., for example, are bought from Warwick Eletcronics Inc. of Chicago, which initially subcontracted the work to IMEC, S.A., in Tijuana.

Kayser-Roth has its Catalina-brand sportswear cut at two small plants in California and Arizona, but the sewing is done at a larger operation in Mexicali, Mexico.

District 12 President Bill Drohan of the IUE in Los Angeles said that among the firms represented in the expanding electronics complex in Tijuana are Litton Industries, Control Data Corp., and Fairchild Camera. Dozens of less well-known electronic firms are scattered throughout the border area.

Vice President Leonard Levy, director of the Amalgamated Clothing Workers West Coast Region, reports getting worried calls from his staff as more of the companies represented by the union establish Mexican operations.

"El Paso, where probably more work pants and sport slacks are manufactured than any other place in the country, stands to be hurt very badly," Levy said. "Just recently, Hicks-Ponder, which has three plants in Texas and Arizona, set up in Juárez (across from El Paso). And I just got a call from a representative in El Paso. He said a company where we are hoping to get an election soon is talking about going to Mexico."

Amalgamated has organized many of the Mexican residents commuting to U.S. jobs, helping them get fair wages. Recently, however, there have been so many "illegals" (in Texas known as "wetbacks" because they sometimes wade the Rio Grande) that there is conjecture about employer "deals" with immigration officers.

At the office of the International Ladies Garment Workers Union in Los Angeles, Vice President Sam Otto said that already there are about 30 American garment plants in Mexicali and about 20 in Tijuana.

"In Mexicali, where the border is a tall wire fence, the American and Mexican plants are almost side by side," Otto said. "Some cutting is done on this side, and sometimes when the water pressure in Mexico is not enough, they press the clothes on this side, but the rest of the work is done in Mexico."

"But you sure don't see many 'Made in Mexico' labels, and of course, not enough union labels," he added.

Among the actions called for by the AFL–CIO Executive Council in its February 1969 statement on U.S.-Mexican Border Problems was the adequate labeling of goods wholly or partially manufactured in the Mexico border plants.

The U.S. State Department tried to discourage opposition to the Mexican plan when it began in 1966 by assuring American labor that American plants would not be moved, that the idea was to move to Mexico plants which otherwise would have become established in other low-wage areas abroad, such as Hong Kong or Taiwan.

The line was echoed by the Mexican government. Mexican Minister of Industry and Commerce Octaviano Campos Salas, in a press conference August 6, 1968, told reporters: "The Mexican government does not encourage a massive exodus of American companies to the Mexican side of the border . . . specially when they operate normally and profitably in the United States."

Less than one year later, it is apparent that there is an increasing exodus of jobs and industries from the United States, perhaps without Mexican "encouragement," but certainly with the same considerable concessions given to any others.

The Mattel experience of the United Rubber Workers, and the manifold problems of the Amalgamated Clothing Workers and the ILGWU, certainly are not isolated examples.

When Transitron opened its plant in Nuevo Laredo, Mexico, employing some 1,500 electronic assemblers, a similar operation of the same company in Kansas City, Mo., lost about 45 percent of its work force. When the plant in Mexico had a three-week work stoppage, employment and overtime shot up in Kansas City, only to fall again at the end of the stoppage.

Standard Components Division of Standard Kollsman Industries, which opened a television tuner plant in Ciudad Acuña, across from Del Rio, Texas, has announced it may double production in 1970, with possible displacement of 800 workers in a similar plant of the company in Oshkosh, Wis.

IUE President Paul Jennings, who with AFL–CIO Vice Presidents Joseph D. Keenan, David Dubinsky and Jacob Potofsky served as a special subcommittee of the AFL–CIO Executive Council studying the problem, said that 48,000 jobs in the manufacture of radio and television sets and components alone were lost from 1966 to 1968.

In Harlingen, Texas, close to the border, the Albertti Seafoods Co. won a decertification election against the Amalgamated Meat Cutters and Butcher Workmen, then moved most of its Texas plant into an expanded operation in Mexico.

Two other plants organized by the Butchers in the area, Booth Fisheries and United Foods, both processors of shrimp, have decreased their operations tremendously, displacing more than 1,000 workers, since similar processing plants opened just across the border.

Last year, a newsletter which analyses Latin American affairs in the United States said that Mexican economists are projecting an eventual employment of 300,000 workers by the border industries, with a production of one billion dollars of goods a year, multiplying tenfold the already serious effect of the program on American unions and the considerable impairment of the federal minimum wage law.

Two agents of IMEC are reported contacting electronic plants in Southern California. An American company which provides sewing machines for the Mexican garment plants reportedly has trucks soliciting manufacturers in Los Angeles to send their cut patterns to be sewn in Mexico.

Nowhere in the elaborate brochures and prospectuses prepared by DATE of Tucson, or the El Paso Chamber of Commerce, or Joe Richards and Associates of Laredo, is there any mention of the Mexican program being an alternative to plants in Europe or the Far East. Their approach is direct: "If you have a labor-intensive production, move to Mexico." The same pitch is carried in Wall Street Journal advertisements.

Joe Richards and Associates says in its brochure: "The only requirements for participation in Mexico's border industrialization program are that production be exported in its entirety and that Mexican labor be used." The firm offers assistance in securing permits, handling customs, furnishing legal and other professional services, compiling statistics, negotiating leases, and selling and financing the product "worldwide," according to the brochure.

Exactly which manufacturers are being lured to Mexico is virtually impossible to determine before the fact, and the established plants are as easy to inspect as the Chinese Communist atomic plants. Photographers hired in Laredo, El Paso and San Diego all were unable to come up with pictures inside existing plants. They said they were denied permission to enter the plants and shooed away by guards.

United Press International, in a recent dispatch noted, "The stampede of American firms for locations south of the border has been a quiet one. Most of them are so security conscious they won't even admit what they manufacture until they actually have signed the papers and agreed to build their plants in Mexico."

The government has joined the hide-and-seek game. A meeting in El Paso last April to tempt U.S. manufacturers to go into Mexico was sponsored by the U.S. Department of Commerce as an "Executive Conference on World Trade." Jennings, protesting to President Nixon said in a telegram: "The Department of Commerce has no business serving as a front for international cheap labor manipulators."

A similar conference was held in Brownsville in May, and more are scheduled.

The solicitousness of the government toward businessmen is not matched by its attitude toward labor.

Henry Muñoz Jr., equal opportunities director of the Texas AFL–CIO, requested information on the border program in February 1968, from Raymond Télles, until recently chairman of the U.S. Section of the U.S.-Mexico Commission for Border Development and Friendship.

When Muñoz got a reply, it was five months later, from the State Department. The letter said: "Unfortunately most of the information you requested is unavailable to us."

Andres Sandoval, a Texas AFL–CIO field representative, said that he asked Télles about the border industry program, and Télles replied: "What border are you speaking of?"

Speaking to a group of businessmen on the program, former U.S. Ambassador to Mexico Fulton J. Freeman said, "I have great confidence that this 1,800-mile boundary can continue to serve as an inspiring example of constructive and harmonious relations and of actions to the mutual benefit of two friendly neighboring nations."

The "inspiring example" may be as disastrous for Mexico as it is for the United States.

In Nuevo Laredo, a 19-year-old girl named Maria Luisa sees her new job with Transitron in terms of a chance to get out of Mexico. "Well, maybe now I have a better chance of going to the United States," she said. "Maybe I'll get a chance to learn something."

Last year, Maria Luisa was a live-in maid, earning the equivalent of $8 a week her meals and Sunday off. She said she still works six days, long hours at more intensive work, and now takes home $14 a week. She went through the three-week stoppage because, among other things, workers were not getting the mandatory one-half hour off for lunch.

"They say we are going to get $26 a week when we finish our training, but who knows?" Maria Luisa said. "I have been working here more than seven months now. We all know the government, in order to bring these factories down, made a deal with the United States so that they don't have to pay us good money like they pay the American workers."

How much does she think U.S. workers get? "At least $60 or $75 a week," she said. "We ought to get the same for the same work. Well, maybe at least $50."

Through joint border committees, AFL–CIO unions along the border share information freely with their counterparts in the Mexican Confederation of Workers (CTM), and Maria Luisa's union representatives will have a chance to know exactly how much American workers are getting for the same jobs under an IUE contract.

In negotiations with other electronics manufacturers, however, CTM representatives recently reported they were told by the employers that the government would not authorize any more than a 10 percent increase from the present earnings around the Mexican minimum wage because the workers were not classed as "professionals."

Ambassador Freeman listed as one of the alleged benefits of the industry program that residents of the Mexican side of the border spend 50 to 80 percent of their earnings in the United States.

IUE Representative Juan Mariscal, a native of Mexico, recently conducted an extensive survey, and his findings are much different. Housing, food, and services, including medical attention, are at least 50 percent cheaper on the Mexican side of the border, he said. Consumer goods like clothes and appliances are priced about the same.

If Freeman were correct, then, the Mexican workers earning about $25 a week or less, would spend most of that either for expensive consumer goods made in the U.S., or for items which they can get more cheaply in Mexico.

Asked if she shops in the United States, Maria Luisa replied angrily, "Are you crazy? You forget I get paid Mexican wages. Maybe I could buy some of the used clothing sold from boxes on the sidewalks, but the 'gringos' can keep that junk."

The only times she has been shopping in the United States, she said, have been when her cousin, a secretary in Mexico City, sends her some money to buy her some clothes or cosmetics not available in Mexico. "She always tells me to get something for myself," Maria Luisa said. "I get some hose, or maybe a sweater."

Ambassador Freeman's confusion is perhaps understandable. American shops on the border do sell a large quantity of consumer goods, particularly clothing and cosmetics, to Mexicans.

A simple check with store clerks, however, quickly shows that these sales are of the most expensive merchandise, almost always to businessmen, artists or government officials from Mexico City or other principal cities of the Mexican interior. The buyers spend $300 or $400 cash at a time. They certaintly could not be $25 a week industrial workers.

Maria Luisa's responses were fairly representative of those given by other workers in Matamoros, Reynosa, Piedras Negras, Ciudad Acuña, Juarez, Nogales, Mexicali and Tijuana, border cities across or near Brownsville, McAllen, Eagle Pass, Del Rio and El Paso, Texas; Nogales, Arizona, and Calexico and San Diego, California. In sum, Maria Luisa does not feel particularly lucky in having found an industrial job.

"I don't like to be treated badly," she said. "The señora where I was a maid was very nice to me. At the job now I'm always nervous."

A manager of one of the Tijuana plants would be surprised to hear such comments. He considers that American business is a blessing to the Mexican workers. "You can always tell a new gal," he said. "The first couple of days they gobble up six or seven doughnuts at every break."

Maria Luisa said: "I work on these small things under a microscope, and they get very angry if we make any mistake or if we don't work fast enough. The foreman always is trying to date us, and if we say no, we have problems, or we can get fired."

Professor Pedro Pérez Ibarra, general secretary both of the Nuevo Laredo CTM and the electronic workers local, describes Maria Luisa's bosses as "slave drivers of the worst sort."

He said he believes the three-week stoppage at Transitron was only the beginning of their problems. "These companies feel that Mexico is just a field ripe for exploitation," he said. "We're going to show them that's not so."

American plants are being established in the Mexico border zone so quickly, and security is so tight, that up-to-date figures are hard to get. Most observers estimate that already there are 30,000 to 50,000 workers employed in the runaway plants, but the total easily could exceed twice that.

There is general agreement, however, that at least 75 percent of the employes are women. Mariscal says that has created another problem.

"They are destroying the Mexican family along the border," he said. "Up to just a few years ago, Mexican women did not work outside the home after they were married. Now you see many wives working while the husbands are unemployed."

"Mexicans are proud, and nothing hurts a man's pride more than to feel 'mantenido' (kept) by his woman," he said. "Some of the men can't cope with it. They take to drinking, or they cross the border illegally to try to find work. Many don't go back."

A number of economists have pointed out other adverse effects the program probably will have in Mexico. One article suggests that productivity is significantly lower in Mexican plants, and that even the great disparity in wages may not be sufficient to keep the plants in Mexico long.

The same article claims that many companies are moving to Mexico just to postpone major capital investments in modern equipment. When the companies finally are forced to make the investment, they probably will want to return to the better trained American workers. A sudden withdrawal of such companies and the resulting unemployment would leave the area worse off than it was before the plants came in, according to the economists.

Several plants established in Tijuana have shut down, but information on the reasons is skimp and conflicting at this time.

What is proving to be easily the most regrettable effect of the program on either side, however, is that the promise of new jobs acts like a magnet to attract thousands of families from the Mexican interior to the already overcrowded Mexican border cities.

Because of the "commuter" practice and the "bracero" agreement for Mexican farm labor (now terminated), Tijuana exploded in 30 years from 20,000 to 400,000 population. Unemployment now is estimated at close to 50 percent, and more people arrive daily.

Approaching Tijuana, or Juarez, which also has multipled rapidly to its present 500,000 population, one is struck by the pathetic sight of countless slum dwellings precariously clinging to the hillsides.

Recent Mexican government figures indicate the country's population is rapidly urbanizing, but a full 25 percent still is "economically inactive." There are so many peasants migrating to Mexico City and the cities of the northern Mexico border that they have become a national institution with a popular nickname.

Partly because of the way they load all their belongings on their backs, and mostly because they have no idea where they will land once they leave their rural homes, these migrating peasants are known as "parachutists."

For a family of such "paracaidistas," Esteban Macias, 34, and his wife and their seven children, their landing was in an unimaginably squalid slum overlooking El Paso across the border.

For almost three months, they lived in a cave, until they could gather enough scraps of wood, cardboard and flattened tin cans to make a shack which does not look like it could stand a healthy sneeze.

Macias was no stranger to poverty, but on the border the oppressive struggle has left him drained and submissive, an old man before 40. "My life is gone, and I have nothing," he said. "Nothing for me. Nothing to leave my children."

The Macias family increasingly is dependent for support on Susano, at 15 the oldest son, who is a "commuter."

Officially, the U.S. government counts 12,000 "commuters" crossing from Ciudad Juarez to jobs in El Paso. The figure certainly is more likely twice that. Susano, who just a few months ago had never seen the United States, is not counted as a "Mexican alien commuter," and neither are about 45 to 65 percent of the "commuters" who cross with documents purporting to prove they are American citizens.

Some of the "commuters" actually are citizens. Susano, not having been born in the United States, "rents" a birth certificate. For $2 paid in advance, he can use the certificate for one day to cross into the United States, where he can earn $6 to $8, if he finds work.

When there is no work, he's out $2, and if he doesn't like the deal, there are plenty of others waiting to take his place.

"Sometimes I have to work for even $3 a day, just to pay for 'el pasaporte,' bridge toll or bus fare, and have something left over to feed my little brothers." Susano said.

If he doesn't maintain himself as a steady customer, someone about his age (and the age on the birth certificate) will be found and will be taught by rote the facts on the document which immigration officials, if they have the time, will ask: "Where were you born? On what date? What is your mother's name?"

If he loses his turn, Susano will have to take his chances with jobs on the Mexican side, where the going rate is about 75 cents a day and work is much harder to find.

The evidence of the abject poverty faced by the thousands who hoped to find a new and better life on the border is everywhere. In Tijuana, the lean-to's sit on the right-of-way between the highway to Mexicali and the fenced-off property. In Nuexo Laredo, they are but a minute from the million-dollar mansion of the Longoria family. In Matamoros and Ciudad Acuña, they trail along the river.

In Piedras Negras, a young "wetback" named Enrique described what desperation born of poverty can bring. Over coffee, obviously pained by the memory, he told this story:

"We were screaming, praying, crying. It was so hot I could feel sweat pouring down my body.

"I was suffocating, yet when I tried to breathe the stench made me dizzy and turned my stomach. I must have gone crazy for some time, because all I remember is that finally I was so tired I wouldn't move.

"I knew—we all knew—we were going to die."

Enrique was one of 47 Mexicans attempting to enter the United States illegally who were locked in a hot and unventilated van so long that all had to be hospitalized and three died.

He left his wife and five children 50 pesos, $4, for food and took the rest of their meager savings and some borrowed money to seek work in the United States. At Piedras Negras, he found a recruiter who signed him up for jobs of $2 and $3 an hour in Chicago, and offered to take him there for a fee.

In the early morning hours of Sept. 30, 1968, Enrique and the 46 others, all from the northern Mexico countryside, huddled in the darkness near the river across from Eagle Pass. At about 2 a.m., they were led into the river and waded across, where $50 was collected from each. They then walked to a ravine near a deserted road where the man with the van picked them up around noon and collected another $50 before letting each one board.

The men were crowded into a space 7 by 16 feet, and when the door was closed the heat and lack of fresh air quickly became intolerable. They pounded on the sides and begged the driver to let them out. He replied the door had been padlocked and he did not have the key. The van was driven to San Antonio, more than 150 miles away, and there it was parked and abandoned.

Passers-by heard noises from the van and called police, and the men were rescued many hours after their ordeal began. The three from whom rescue came too late received pauper's burials in San Antonio.

Enrique and the other survivors were returned to Mexico by the U.S. Immigration Service. But Enrique did not go home.

"I can't go back until I have the money to pay back what I owe and to give my wife for what she has suffered without me," he said.

That may take some time. In Piedras Negras, working as a laborer in the day and cleaning up three bars and a restaurant at night he seldom makes as much as $12 a week. (Piedras Negras is about 75 miles from Marroteran, where 156 coal miners who were earning $6 to $17 a week recently were buried by an explosion.)

Enrique is looking for a good job, but he is not optimistic. "Every day more come. They get off the buses by the dozen. Or they say they come by train, or walking or asking for rides, any way they can."

Why do they keep coming if there are no jobs? "They hear there's much money to be made on 'la frontera' (the border)," Enrique said. "They're fools like me. Some may be lucky, but most of them come to suffer."

"What's worse," he said, "some bring their families. Here you can't grow food. You don't have any land, or chickens, or goats for milk. For everything you have to pay.

"Those are the ones I pity. You see them get more and more desperate. Then they get drunk because some little one died, or because their daughter ran off and they think she's selling herself to the 'gringos.' At least my woman and my children, they're where they can get food, too little maybe, but still enough to live. God keep them."

Crossing from Mexicali into the U.S. at Calexico, one can't escape seeing a large sign in two languages informing "commuters" that their crossing cards, which "allow them to work in the United States" are not to be used to work at places where labor disputes have been certified by the Department of Labor. A list, the sign informs anyone interested, is avilable in the immigration office.

In preparation for their drive in the Coachella Valley of California, members of the United Farm Workers Organizing Committee recently followed five busloads and assorted cars and pick-ups full of "commuter" farm workers going from Calexico the 90 or so miles to Coachella.

The buses stopped at many of the farms on the certified strike list, and the UFWOC members questioned the workers as they got off. They discovered that most of the "commuters" had to arise at 1 a.m. to catch the bus and had long trips home after they were returned to Calexico.

"I figured they were spending 16 hours for 8 hours pay," says the Rev. Jim Drake, an aide to UFWOC Director Cesar Chávez. "That figures around 80 cents an hour."

"Most of them didn't know they were going to work at a struck place," Drake said. "But once they got there, they had the choice of staying in the bus for eight hours without pay, or getting commercial transportation back, or, of course, going to work. In other words, they had no choice."

In Texas, a January 1968 survey showed 80 percent of the "commuters" interviewed in Laredo were earning less than $1.60 an hour.

The presence of a seemingly limitless supply of "commuter" labor compounds the daily work of union representatives on the border.

David L. Jacobs, business agent of a Laborers local in Laredo, recalls a group of cafeteria workers striking for union recognition. "One of the pickets had a sign saying they were paid 25 cents an hour," Jacobs said. "The owner was very angry when he saw it. He said he actually was paying 32 cents."

The strike resulted in recognition and a contract calling for $1 an hour in the third year.

In El Paso, Hector R. Garcia, president of the El Paso Central Labor Union, tells of a recent strike in which, after a 20-year bargaining history, the union had to remain out six months to keep arbitration in the agreement. Garcia said the union struck with 250 of 256 production employees on a Thursday to see 300 strikebreakers hired by the following Monday at $1.60 an hour.

By letting selfish economic interests mold its policy toward Mexico, the United States has managed to bring about the worst imaginable situations on either side of the border.

On the United States side, there is talk of putting up picket lines at the international bridges to keep out the "commuters."

On the Mexican side, anti-American literature circulates freely and thousands of industrial workers, students, and teachers call themselves "communists" because they can't think of any other word which can adequately express their antipathy towards the United States. And one hears often repeated, not always with a smile, the plaintive lament of a former Mexican President, who said: "Poor Mexico—so far from God—and so close to the United States."

Affidavits of 3 Persons Alleging INS Intimidation, Harassment, Detention, and Destructive Exposure of Pictures Taken at Border-Crossing Points

AFFIDAVIT

My name is Ed Gaida. I live at 426½ West Woodlawn, San Antonio. Texas. My permanent occupation is that of a professional photographer. I have been retained by the United States Commission on Civil Rights to photograph various conditions in the Rio Grande Valley.

On Wednesday, November 27, 1968, I arrived by private automobile at the International Bridge at Hidalgo, Texas, which is just outside of the town of Hidalgo. Accompanying me was Mr. Duane Gibson, who is employed by the Texas Council of Churches and is a resident of the area. We arrived at the bridge at approximately 5:30 in the morning, parking the car approximately a block from the actual customs house or border crossing point. Our purpose was to take pictures of Mexican nationals—often referred to as commuters, green-card workers—crossing the International Bridge in order to do agricultural day labor in Texas. Mr. Gibson, who is familiar with the conditions in the Valley, had told me that at this particular time of the year this particular border crossing point would be quite active at this hour of morning because green peppers were being harvested in the area and that quite a large number of workers would be crossing the border from Mexico to work in the United States. Trucks were waiting to take the workers to farms in the area.

Since it was too dark to photograph at that time we waited in the car until about 6:15 or 6:30. We then got out of our car and I walked across the street to a small waiting station—a bus waiting station—and started to take pictures of the people coming across the bridge, trying to photograph people who might be actual farm workers. I had two cameras with me, both of them around my neck. The specific shots that I was trying for at the time were the workers showing their credentials to the American official who would check them and nod them on through.

I had taken two or three frames on a roll of film when an official appeared and asked me where I was from. His exact words were, "Where are you boys from?" I replied that I was from San Antonio. He asked me what I was doing and I told him that I was photographing green-card workers crossing the border. He asked me who I was taking these pictures for and I told him that I was taking them for the U.S. Commission on Civil Rights. There was no further word from him: he turned around and walked into the building there, the Customs house.

This official, I inferred from his insignia, was an employee of the Texas Liquor Control Board. They are responsible, I believe, for affixing tax stamps to alcoholic beverages which are purchased in Mexico and brought across the border into Texas.

At this time Mr. Gibson had been standing approximately 15 feet from me. He was also shooting pictures. I call to Mr. Gibson and told him that I suspected that we were going to be in for some questioning about our reasons for being there.

Very shortly after that, I would say within two minutes, it was certainly no more than that, an official came out of the building, ran over to where we were, literally, jogging—not a full gallop, but he was in a hurry to get to us. He came over and informed me that I was breaking the law. In fact he said this three or four times. He stated that it was against the law to take photographs at a port of entry to the United States without prior permission from the head of the port. And he kept asking me whether I knew that I was breaking the law. I said no, that I didn't and I asked him where I might speak to the head of the port—whose name was Mr. Snowball—and ask his permission. He informed me that the head of the port would not be there until after eight o'clock in the morning. He said that we had to come into the building and give our names and addresses. Mr. Gibson and I therefore walked into the offices there in the Customs house and we wrote down our names and addresses. He asked us to produce our driver's licenses to check to see whether what we had written agreed with what we had on our identification. He then told us that we could leave. The man who required us to give him our identification wore the uniform of a United States customs official.

We walked out of the building, the customs building, across the street and down to where I had parked my automobile. We opened the doors of the car when suddenly a car bearing the insignia of the Sheriff or the Marshal of Hidalgo County drove up behind my car. In the car was a Deputy Marshal, who was wearing a gun, and the same customs official who had required us to produce our identification. The latter asked me who I worked for. His words were, "Does it have something to do with civil rights?" I said yes. He asked me whether I had any identification to prove that I worked for the Civil Rights Commission and I told him that I and that it was back in my motel room and that I would be happy to go get it for him.

He then walked around to the other side of the car—the side opposite the driver's side—opened the door and proceeded to search my car, opening my large camera bag and throwing some coats and hats and things that I had lying on the back seat around. He then returned to the driver's side of the car and told Mr. Gibson and me that he was going to take our cameras. He took one camera from me—leaving the other—and he took Mr. Gibson's camera and then told us that we have to drive our car over to the Customs house where he would give us a receipt for the cameras he was taking. The camera he took from me is worth approximately $400.

I let him take the cameras because I didn't know really whether or not I was breaking the law. I had no knowledge of any law concerning photography at a port of entry. I also felt at the same time that it was better to let him have the cameras than to argue with him because I did not know what my rights were. He perhaps would have forcibly detained me by putting me in jail or he could have turned me over to the Deputy Marshal.

After taking the receipt Mr. Gibson and I got into my automobile and drove back to my motel room in McAllen. I called a friend of my family—a McAllen businessman—and asked him to intercede for me with Mr. Snowball. He returned my call approximately 15 minutes later and told me to go down and pick up my cameras and if there was any problem I was to call him and he would take care of it.

Mr. Gibson and I got into the car and drove back to the Customs house. It was then about nine o'clock. I asked to see Mr. Snowball, who then came out. I introduced Mr. Gibson and myself and I presented him the letter I had from Mr. Clarence Hunter of the Civil Rights Commission.

While Mr. Snowball was reading my letter I glanced at the wall over the desk and noticed that there was a frame there containing a list of statutes governing ports of entry to the United States. One of the sections was on photography. I cannot quote it verbatim but it says that photographs shall be permitted to be taken at ports of entry and that the only time permission is necessary from the head of the port is if the photographs are to be used for commercial or advertising purposes.

When Mr. Snowball finished reading my letter I asked him, "Mr. Snowball, exactly what law have I broken?" He told me very nonchalantly that there was no law against taking photographs at border crossings or ports of entry to the United States. And I asked him if ithis was true why had the official that morning informed me so very emphatically that I was breaking the law. I received no answer. Mr. Snowball then told me that he didn't like people misrepresenting themselves as government employees and I told him that I was not misrepresenting myself and the letter which he had just read proved that I was actually there on business for the Commission on Civil Rights. I received no answer from Mr. Snowball to that point.

Mr. Snowball then said, "Well, we don't like people sneaking around." I told him that I had not been sneaking around—I was standing right out in the broad open taking pictures. Again he did not reply. I presented Mr. Snowball with the receipt for the two cameras and he returned the cameras to me and to Mr. Gibson and told us that we were free to take pictures. It was, however, at this time approximately 9:15 in the morning which meant that all the commuting workers, green-card workers, had already crossed from Mexico into the United States and were well on their way to the fields if not already in the fields working.

Thus, I was unable to obtain any photographs of green-card workers crossing the border; in other words I was unable to fulfill my assignment for the Civil Rights Commission.

When I returned to San Antonio I sent all my film to a professional photofinishing concern in Dallas, Texas. All of the film was high-speed Ektachrome film which gives color transparencies. When my slides were returned to me there were no pictures of workers crossing the border, although I know positively that

I shot at least two or three frames on the roll of the workers. I was taking pictures with the telephoto lens of the workers presenting their credentials to the immigration official inside the building.

EDWIN E. GAIDA.

THE STATE OF TEXAS,
County of Bexar.

Before me, the undersigned, a Notary Public in and for said Bexar County, Texas, on this day personally appeared ED GAIDA known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 12th day of December, 1968 A.D., 1968.

ROSE ANNELLE MCCLUNG
Notary Public, Bexar County, Texas.

FEBRUARY 7, 1969.

To Whom It May Concern:

February 3rd: I, Narcise Aleman, went to the Texas Employment Commission Office to be processed to find a job. I was notified by an employee of the Texas Employment Commission office that I would find a job if I would go to the Reynosa International Bridge, south of McAllen, Texas. The employee said that farm workers were hired there.

February 4th: Marcos Lopez, from McAllen, Texas, and I arrived at the Reynosa International Bridge around 5:00 a.m. Marcos drove around the conglomeration of people slowly, and from the car I took a picture of people, all dressed as farm workers, boarding a bus. We then parked the car and I moved away from it, taking pictures of the lines of trucks that were waiting to load people and in some cases loading them. After taking a few photographs of people, trucks, and people boarding trucks, I walked over to the checkpoint from which all of these people proceeded.

From outside the building, through the glass wall, I snapped a picture of the steady flow of people from Mexico, all dressed as farm workers. Immediately, all of three immigration officers surrounded me and demanded the film. I said, "No, it is my film." Then one of them said, "Then destroy the film." I replied, "Why should I?" I offered to return the picture after it was developed, but they said to expose it, to which I answered that I had already turned it to the next picture. Then I was told that I should come into the building while they called their boss, Mr. Snowball. Then, the Mexican-American officer asked, "Who are you? What are you doing here?" I told him my name and said, in Spanish, that I was working for the National Student Association and we were conducting an academic study of the area to learn what effect the influx of Green Carders had upon the citizens of the Rio Grande Valley and how this affected the educational level of the Mexican-American students, but he did not seem convinced. He asked to see my identification papers and I informed him that I had forgotten my billfold at home. Then to officer said that I could not prove who I was or what I was doing. I told him that it was my word against his. He said, "Yes, but I work here." I said, "Yes, but I pay the taxes that pay your salary." Second officer: "You have violated a federal regulation that prohibits taking photographs on federal property." "There is no national security involved here." "Nevertheless." "Show me the regulation under which you are holding me." Second officer: "I don't have to." The same officer continued, "Leave the camera here and you can pick it up after eight." "How do I know you won't destroy the film while I am gone?" Same officer, "Then you will have to stay here until our boss comes." "That's all right, I'll just keep the camera." All during this dialogue there were people coming through the checkpoint. While they were coming through, the officers took turns asking me questions and threatening me with arrest.

Finally, after what seemed like a long time, they said that they had called the City Marshall. I was too scared to think of measuring the time that I was interrogated at the checkpoint, or to get the officers' names, or even to think that I was on federal property and that the Ridalgo, Texas city marshall had no jurisdiction on federal property; therefore, he could not legally arrest me.

I tried to determine for sure what I was being arrested for, but all they said was for taking pictures on federal property. I said that I needed to know in order to notify my attorney, but the city marshall said. "You do that later, right now, you come with me." At this point, he took me by the arm and led me to his car. One of the officers signed a blank and did not fill in what I was charged with. For all practical purposes, I was being charged with that officer's signature. I explained in the car to the city marshall, in Spanish, what I was doing and whom I worked for. I tried to get him to say that I was under arrest, but he just kept saying that I was being "detained." It was not until about two hours later that I was able to talk to the judge and she said that there was no regulation and that I was free to go. After all of that fear and discomfort, there was no law that I had violated, but because three federal employees thought themselves above the law and invented a law that never existed, I went through all that hell.

We the undersigned witness that the above text is correct and true to the best of our ability.

NARCISE ALEMAN.
MARCOS LOPEZ.

AFFIDAVIT

My name is Duane Gibson. I live at 218 W. Gare, Pharr, Texas. I am working with the migrant ministry of the Texas Council of Churches, in the lower Rio Grande Valley.

On the morning of November 27, 1968, I was with Ed Gaida, 426½ West Woodlawn, San Antonio, Texas. We arrived at the International Bridge outside of Hidalgo, Texas, at approximately 5:30 in the morning. I was with Mr. Gaida until about 10:30 that morning, when he left the valley to return to San Antonio.

I have read the Affidavit of Mr. Gaida, concerning what happened to the two of us at the bridge that morning, and affirm that it is true. As in his report, My camera was also taken away, and returned several hours later.

On the evening of November 26, 1968, I removed a roll of 20 exposure film from my camera and put in a roll of 36 exposure film. That evening I took several pictures on the new roll. Then, at the bridge on Wednesday morning, November 27, 1968, I took three more pictures before having my camera taken away. To my knowledge, my camera was in fine working order at the time it was taken away. As I have said, it was returned to me several hours later by Mr. Snowball.

Later that afternoon, I was using the camera elsewhere, and noticed that the built-in light meter seemed to fail to function. During the next several days I finished that roll of film, and had it developed with the roll of 20 exposures. When they were returned, all 20 pictures on the first roll were ok, and the ones taken up to and including the pictures taken at the bridge on the second film were ok. There was not a single good picture from any of the frames on the rest of the film. I had a local studio send the camera to the New York Company (Voightlander) for repair. I received word that because the camera had been dropped, the light meter needed to be replaced and several adjustments were needed. I have never dropped the camera, or mishandled it. This repair bill cost me $49.40. I feel that the meter was broken while in the hands of the Customs' Agent at the International Bridge, and, by law, they had no right to take the cameras from us.

DUANE GIBSON.

The State of Texas,
County of Hidalgo

Before me, the undersigned, a Notary Public in and for said county of Hidalgo, Texas, on this day personally appeared Duane Gibson known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of February, 1969 A.D., 1969.

——— ———.

LABOR DISPUTES—CURRENT, JULY 23, 1969

Employer	Address	Date determined
CALIFORNIA (AGRICULTURAL)		
Giumarra Vineyards Corp	Post Office Bin 1969, Bakersfield	July 28, 1967
W. B. Camp, Jr.	Post Office Box 576, Bakersfield	Jan. 31, 1968
Anton Caratan & Sons	Route 1, Box 720, Delano	Do.
M. Caratan	Route 1, Box 258, Delano	Do.
Jake Cesare	1835 Terrace Place, Delano	Do.
Louis Caric & Sons	Route 1, Box 360, Delano	Do.
Bruno Dispoto	Post Office Box 1148, Delano	Do.
P. J. Divizich Fruit Corp	Post Office Box 97, Ducor	Do.
Frank Gallo	Post Office Box 337, McFarland	Do.
George A. Lucas & Sons	Post Office Box 74, Earlimart	Do.
Frank A. Lucich	Post Office Box 1266, Delano	Do.
John Pagliarulo	Route 1, Box 869, Delano	Do.
Pandol & Sons	Route 2, Box 388, Delano	Do.
Gene Radovich	Post Office Box 69, Delano	Do.
Jack Radovich	Corner of Road 200 and Avenue 4, Richgrove	Do.
Sandrini Bros	Route 1, Box 362, McFarland	Do.
D. M. Steele & Sons	Post Office Box 1350, Delano	Do.
Tudor & Sons	Route 1, Box 217, Delano	Do.
A & N Zaninovich	Trocha Strip between Road 184 and Road 188, Delano	Do.
George Zaninovich	1837 Terrace Dr., Delano	Do.
Marko Zaninovich	Route 1, Box 725, Earlimart	Do.
Marion Zaninovich	Avenue 24, Road 192, Richgrove	Do.
Vincent Zaninovich	1839 19th St., Val Verde Lane, Delano	Do.
Vincent Zaninovich & Sons	Post Office Box 1268, Delano	Do.
Chuchian Farms	Route 1, Box 66, Coachella	June 18, 1968
David Freedman Co., Inc	Post Office Box 501, Thermal	June 20, 1968
Ara Herbekian/Mel-Pack Ranch	Post Office Box 534, Thermal	June 26, 1968
Coachella Vineyards	561474 Highway 111, Thermal	Do.
John Zaninovich	2124 Riviera Dr., Vista	June 28, 1968
Ross Cariaga	1120 Date St., Coachella	Do.
H. & M. Ranch Co	Highway 99, Oasis	Do.
Richard Bagdasarian	Post Office Box 698, Mecca	Do.
Richard Glass & Co., Inc	Post Office Drawer SSS, Indio	Do.
Cy Muradick & Sons	81078 Avenue 45, Indio	July 2, 1968
R. W. Blackburn & Sons	Route 2, Box 266, Thermal	July 5, 1968
Karahadian & Son, Inc	Post Office Box 756, Thermal	Do.
Eugene Nalbandian, Inc	Post Office Box 665, Lamont	July 19, 1968
John Kovacevich	Post Office Bin 448, Arvin	Do.
William Mosesian	Route 6, Box 522, Bakersfield	Do.
Berge Kerorian	2720 Rio Vista Dr., Bakersfield	Do.
Charles Malovich	Post Office Box 541, Arvin	Do.
Kern Valley Farms	Post Office Box 505, Lamont	July 23, 1968
Frank Guidera	Post Office Box 2384, Bakersfield	July 31, 1968
Johnston Farms	Edison Highway, Edison	Aug. 7, 1968
R & L Farms (Roberts and Laborde)	986 Davis Ave., Post Office Box 326, McFarland	Feb. 19, 1969
CALIFORNIA (nonagricultural)		
Bermite Co. (Division of Whittaker Corp.)	Post Office Box 1751, Indio	Apr. 23, 1969
TEXAS (AGRICULTURAL)		
Griffin & Brand (Trophy Farms)	Post Office Box 1840, McAllen	July 10, 1967
La Casita Farms	Rio Grande City	Do.
A. B. Margo Farms	do	Do.
Rancho Grande & Ringgold Farms	do	Do.
Starr Farms Co. (Los Puertos Plantation)	Rio Grande City, Starr Co	Do.
Sun-Tex Farms	do	Do.
TEXAS (NONAGRICULTURAL)		
Transport Co. of Texas	2728 Agnes St., Post Office Box 151, Corpus Christi	May 3, 1968
Alamo Express, Inc	51 Essex St., San Antonio	June 14, 1968
Darbyshire Steel Co., Inc	1900 E. Paisano Dr., El Paso	Mar. 7, 1969
Texas Steel Corp	Post Office Box 991, Harlingen	July 2, 1969

Source: Immigration and naturalization Service, Justice Department, Washington, D.C.

THE "GREEN-CARDER" AS A FARM LABORER—PROS AND CONS REGARDING THE RESIDENT ALIEN SITUATION

(By E. Russell Carter, National Council of Churches)

The Section on Migrant Ministry has joined many other agencies and individuals concerned with the many social-economic problems related to one degree or another with immigration policies and regulations, in searching for some means to stabilize and regularize the movement of alien traffic in the USA as it relates to farm labor.

The so-called "green card" issue is seen by many as the one major factor threatening the success in building of community among farm workers, in organizing for betterment, and general reduction of the high percentage of unemployment of domestic laborers in our nation. Quite obvious is the negative impact of certain of our immigration practices and enforcement policies on the efforts of farm workers to improve their lot. We have been persistently consistent for many years in saying this must be changed.

Vice President Humphrey, in a letter to Cesar Chavez seems to agree to the fact that an answer must be found. He states:

> "If the fault is looseness in enforcement, the enforcement must be changed and tightened. If the fault is in the national administrative policy, then that must be changed. I think you are correct in your analysis that no reasonable degree of fairness in recognizing the rights of farm workers, on a comparable basis with other American workers, can occur without substantive change in enforcement of immigration procedures to accompany the extension of the NLRA to farm workers."

With this we all agree.

But to be able to come up with the reasonable and workable solution of an unbelievably complex and baffling problem, we must become thoroughly cognizant of its complexity, clear as to its ramifications, and perhaps dispel ourselves of some generally held assumptions.

I have attempted to gather some facts and observations from various quarters. These include the U.S. Department of Labor, Attorney General Ramsey Clark, the Immigration office of Church World Service, and others. Such has, to a degree, clarified my thinking and also, even more, mystified me. I am sure the following remarks may have the same effect upon some of you.

However, to the point that we may eventually find a constructive solution to this vexing problem, let me try by spelling out some assumptions oft times heard in our circles.

ASSUMPTION I

Bearers of alien registration cards (Form I–151) known as "green carders" are compelled by law to establish residence in the U.S. within a specified time.

False While it is true that an applicant requests the "green card" for the purpose of establishing residence in the U.S., once the card is issued he is under few restrictions, including any compulsion to remain physically in such residence or even in the country.

Actually what a "green card" really does is extend "permanent residence rights in the U.S." or *the right to establish residency if so desired*, with no provisions to make mandatory physical presence in such residence. Charles Gordon and Harry Rosenfield, writing in *Immigration Law and Procedure*, Volume 1, 1967, describes this device as an "amiable fiction, since the commuter is coming temporarily and usually returns to his home in Canada or Mexico each night."

ASSUMPTION II

In light of the "establishment of residence in the U.S.," clause commuting as witnessed on the U.S. Mexican border and the Windsor, Canada-Detroit "frontier" is illegal.

False Since there is no legal requirement for the recipient to reside in residence in the U.S.A. even though he petitioned for the alien visa which extends lawful admission for permanent residence prior to issuance of the "green card," he is free to "travel or live where he pleases." As stated by James C. Nix, labor economist, Office of Farm Labor Service, Bureau of Employment Security,

> "They must pay taxes, are subject to the military draft, and may travel or live where they please. Some of the Mexicans, in fact, continue to live in Mexico and migrate seasonally to the United States or commute daily to jobs in border areas like the Rio Grande and Imperial Valleys."

ASSUMPTION III

The "green card" concern is primarily one of the Mexican *farm worker* and must therefore be dealt with basically in that frame of reference.

False Although they perhaps have more publicity than other occupational categories of "green carders," Mexican *farm workers* make up only a small fraction of the total. Only 5.5 percent of a sample in a recent survey entered their occupations as farm workers or foremen and another .7 percent as farmers or farm managers.

In 1965, of a total of 631,100 Mexicans filing alien address cards in the U.S., 34,700 were identified as farm laborers and foremen.

This category was exceeded by those filing as operatives and kindred workers, laborers (except farm and mine), housewives, students, those retired, and children under 14 years.

ASSUMPTION IV

The "green carder" concern in the U.S. is primarily that of the southwest or California scene involving Mexicans with only limited relationship to the national scene.

False In 1965 there were 280,212 new alien registration cards (Form I–151) issued in the U.S.A. These represented practically every category in the occupational field ranging from the "unemployed" to highly skilled labor and practically every profession. These came from an exceedingly wide range of countries.

Therefore, in recalling the figure of 34,700 *Mexican farm workers of that year*, we must reach the reasonable conclusion, that the phenomena of the southwest Mexican "green carder" as he relates to the employment scene of that area, *must* be considered as part, and a relatively small part at that, of a national phenomenon, and that any remedial action or program must "make sense" for the total situation and not narrowly restricted to that area which involves farm concerns only, often even more narrowly restricted in our thinking to the southwest and west.

ASSUMPTION V

Since the Secretary of Labor in 1965 issued a directive that no "green carder" will be certified for work in situations where labor disputes exist, the presence of either resident or commuter "green carders" at work on "struck farms" is a violation of such a directive.

False In the first place the Secretaries directive *does not apply to those "green cards" which were issued prior to the issuance of the directive.*

Therefore any "green carder" having received such a card prior to that time is free to work in such situations.

Secondly, "only those aliens in possession of alien registration receipt cards, indicating that they have been granted permanent residence rights in the U.S. (the so-called green card), *who entered the U.S. subsequent to the Secretary of Labor finding that a labor dispute exists at a given place of employment*, and *intend to be employed and actually are employed by that employer*, come within the scope of (the) regulation." (Included in a letter from U.S. Department of Justice, August 12, 1968).

The Department of Justice points out that.

> "the vast majority of the holders of "green cards," over three million of them, who maintain their year round residence in fact in the U.S. are not precluded by this regulation from being employed at a struck place of employment."

ASSUMPTION VI

What is needed to solve this problem is a change in the law to *compel* holders of the "green cards" to in fact establish permanent residence in the U.S.A. within six months after issuance of such alien registration receipt card, and thus eliminate the commuter traffic so prevalent today.

Largely False Such a proposal poses considerable pros and cons which should be carefully weighed.

1. Such a law would have to apply "across the board" to all holders of the "green card," not just the farm workers commuting from Mexico to work in the southwest or west.

2. Such a law would fail, it seems to this writer, to eliminate commuting. There is no law in the U.S.A. which dares to state that a citizen, native born or naturalized, who has an established residence in the country is required to live in it. Indeed no law restricts a resident of the U.S. from living and working abroad indefinitely, or even commuting to such a country if he desires. Such privilege would extend to the immigrant who becomes a resident citizen of the U.S.A.

3. There would be certain gain in such a law should it be enforceable, in that it perhaps would:

(*a*) tend to decrease commuting,

(*b*) tend to increase a resident population, which could feasibly open up opportunities;

1. for education, and enlightenment re: issues, loyalties, commitments, etc.,
2. better enable organizing efforts which are so seriously hampered if not eliminated in a predominantly commuter situation.

Let us not let the complexity and frustrating aspects of this problem frighten us off. They are certainly not listed to indicate any desire on my part to back off from this situation. Rather, it is an effort to indicate in some degree the frame of reference, the platform from which we have to work and devise our procedure and strategy. It is a problem far greater than ourselves. Let us recognize it as such and admit it. In so doing we may be tapping many shoulders of potential allies we know not of.

What seems to be called for at this point?

1. As pointed out, there are laws on the books and administrative rulings in the record. As inadequate as they may be, a meticulous administration of these laws and rulings must be forthcoming. We have a responsibility to watch-dog this one.

2. While the nature and shape of new and strengthened legislation is very foggy at this point, there must be continuous study and exploration of such possibilities, keeping in mind the broad and inclusive aspects of the problem.

3. While we must not depend upon it, time itself *may* tend to lead to a solution, Writing in *Farm Labor Developments, U.S. Department of Labor of Manpower Administration*, James C. Nix states:

> "The current policy severely restricting admission of immigrants for agricultural work prevents an influx of young workers from Mexico. At the same time, the ranks of the middle-aged and elderly farm workers will be thinned out not only by retirement and death, but also by the tendency of the immigrants to move from agricultural to non-agricultural work. The results should be a net decrease in the number of "green carders" in agriculture."

4. In the final analysis, however, we come to recognize the ludicrous fact that the ultimate and telling force to control or even eliminate this major threat to indigenous organization and self betterment is a strong and effective indigenous organization itself. If time would allow someone should research the effect the United Auto Workers, for instance, has on the number of Canadian commuters crossing into Detroit who are working in the automobile plants *without sanction of the union*. Such organization and control, in my estimation, is the one effective and long term means of solving this baffling problem, as arduous, long-term and heartbreaking as it may be.

THE CATHOLIC UNIVERSITY OF AMERICA

THE SHORT-RUN SOCIO-ECONOMIC EFFECTS OF THE TERMINATION OF PUBLIC LAW 78 ON THE CALIFORNIA FARM LABOR MARKET FOR 1965-1967

by

THE REVEREND VICTOR PAUL SALANDINI, M.A.

A Dissertation submitted to the Faculty of the School of
Arts and Science of The Catholic University of America
in Partial Fulfillment of the Requirements for the
Degree of Doctor of Philosophy

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June, 1969

Washington, D.C.

DISSERTATION

THE SHORT-RUN SOCIO-ECONOMIC EFFECTS OF THE TERMINATION OF PUBLIC LAW 78 ON THE CALIFORNIA FARM LABOR MARKET FOR 1965-1967

Prior to 1870 California was a grain and cattle country, characterized by specialization and large-scale ownership. Subsequently a continuing abundant supply of labor along with production and marketing conditions offered the opportunity for a highly profitable transition to labor-intensive fruit and vegetable farming. Thus, in California, the pattern of seasonal labor use evolved into dependence upon large numbers of migratory seasonal farm workers as the magnitude of demands for hired farm labor was too great to be fulfilled by relying upon the work of all members of the farm family and the cooperative exchange of work with neighbors.

Of equal significance are the sources of supply of the seasonally hired labor upon which California agriculture has depended. Originally these sources included Chinese, Japanese, and other Asians. After their exclusion industrial inactivity led to a great influx of American vagrants.

World War I saw this supply of labor depleted. Growers turned to Mexico as their latest source of labor, and Mexicans came to dominate the seasonal farm labor scene until the Great Depression. With the onset of World War II a renewed interest in employing Mexican nationals led to formalizing of the provisions whereby farm workers under contract could enter the United States until 1947. After several years of unsatisfactory experience Public Law 78 was enacted in 1951 in response to demands of the Mexican Government and a possible farm labor shortage arising from the Korean emergency.

Recognizing that farm labor shortages no longer existed and that employment opportunities, wage rates, and working conditions of the domestic farm worker desperately needed improving, Congress did not extend the Mexican contract farm labor program after December 31, 1964.

This dissertation examines the short-run socio-economic effects of this program. It concludes that the large-scale employment of Mexican contract workers resulted in overproduction of fruits and vegetables and had a depressing effect on farm market prices. It further concludes that the program deprived domestic farm workers of employment opportunities, adversely affected their wage rates, and lowered measurably their living standards. It was everywhere evident that a positive farm manpower policy was needed.

Strong emphasis is given to the fact that a large, undefined labor supply of illegal entrants and resident aliens is available in the Southwest. Therefore, effects of the termination of Public Law 78 were only minimal and transient.

INTRODUCTION

Foreign workers have been an important source of farm labor in California from the beginning. With the entry of the United States into World War II demand for production mounted at a time when American farm workers were entering defense employment. As a result, an agreement was reached with the Mexican Government that Mexican workers would be brought officially into the United States to assist in agricultural work. The interesting story of the interaction of politics and economics in this endeavor is examined here with major emphasis being given to the resulting social and economic effects on the California farm labor market.

Statement of the Problem

One of the most complex problems in the economic and social environment of today derives from seasonal farm employment. For the farmer the ever-present problem is getting a sufficient amount of capable labor to meet the peak harvest needs. For the seasonal farm worker the perennial problem is that of securing employment in order to meet living expenses. Synthesizing of these incongruous needs into a workable program has increasingly claimed the interest and concern of the American public.

California's industrialized form of agriculture depends on wage laborers. The number of these workers needed varies widely from season to season and from crop to crop. Harvesting of the different fruits and vegetables is the major labor-consuming operation. The ensuing variation in the levels of employment may readily be seen from the high and low employment figures for four counties for the years 1955, 1958, 1961, 1964, 1965, and 1967 shown in Table 1. For example, employment in San Joaquin County in 1955 varied from a low of 13,960 in March to a high of 37,000 in October, a difference of almost twice the low employment figure.

This wide spread between the high and low number of workers required for these counties points up how dependent the area is on a flexible supply of local and migrant temporary labor. Except in Ventura County the peak demand was two or three times the number required in the month of lowest labor needs. Total agricultural employment in these counties was used as giving a better idea of the magnitude of unemployment and underemployment existing in the farm labor force. Underemployment of farmers and unpaid family workers and year-round hired domestic workers makes for a loss to society in lower production and results in the standard of living of these groups being lower even if not intolerable. It is recognized that totals and averages can obscure facts and

TABLE 1

MINIMUM AND MAXIMUM EMPLOYMENT OF FARM WORKERS FOR SELECTED COUNTIES AND YEARS

County and Year	MINIMUM		MAXIMUM	
	Month	Number Working	Month	Number Working
Imperial County				
1955	August	8,590	January	16,290
1958	August	9,210	December	21,180
1961	August	7,010	February	18,190
1964	August	4,810	November	13,770
1965	September	4,980	November	10,850
1967	December	4,640	November	13,830
Monterey County				
1955	January	5,130	September	11,680
1958	January	5,790	July	16,280
1961	January	5,700	September	18,160
1964	January	7,420	September	19,530
1965	January	5,760	June	15,530
1967	January	6,310	July	14,000
San Joaquin County				
1955	March	13,960	October	37,000
1958	December	14,890	September	34,560
1961	December	13,000	October	29,760
1964	March	11,650	June	27,680
1965	March	11,750	June	25,650
1967	November	11,000	October	24,580
Ventura County				
1955	January	8,820	October	12,970
1958	January	10,570	October	16,040
1961	December	10,460	October	14,920
1964	November	8,500	May	13,780
1965	January	8,040	July	13,080
1967	January	9,110	May	12,490

Source: California State Department of Employment, Report # 881M trends and therefore mislead. For instance, all groups of workers in Imperial County tended to fluctuate constantly whereas this was not true for the other three counties.[1]

A major effort to do something about the plight of the American farm worker culminated in the termination of Public Law 78 on December 31, 1964. Public Law 78, enacted in 1951, became an enduring arrangement for what had begun in 1942 as a war-time measure to offset farm labor shortages. The bracero program under Public Law 78 had as its purpose to provide a source of supplemental farm labor through the contracting of Mexican nationals to perform seasonal farm hand labor in areas of the United States where the Secretary of Labor certified that there was a farm labor shortage.

Many varied but interrelated questions concerning the possible socio-economic consequences attended the termination of the program. The important implications for growers centered around the need for and the ability to obtain workers or to make adjustments in production.

To domestic farm workers, termination of the program and the resulting increase in grower competition for domestic workers were expected to mean increased employment opportunities, higher wages, and improved working conditions.

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[1] Having lived in Imperial Valley from 1957-1962, the author is aware of the facts that families go North in the summer because of the high temperatures and that most of the farmers have the status of operators rather than owners. That is, unpaid family members in the farm labor force varied in this county but not in the others.

Public officials were faced with the need to develop programs to provide maximum employment opportunities for domestic year-round and seasonal hired workers and at the same time to help growers meet their peak seasonal labor needs. The United States Department of Labor launched an intensive program to meet these needs.[2] Probably the most significant action undertaken by the Secretary of labor was that of prescribing an increase in the hourly wage standards that must be offered to domestic workers to obtain certification that domestic workers were not available.[3] Concern was also expressed by the Farmers Home Administration, United States Department of Agriculture, over the possibility that discontinuance of Public Law 78 would have a major impact on its housing program as the Mexican contract workers were single men and their potential replacements would have differing housing needs.[4]

Scope and Importance of the Study

The general objective of this dissertation is to provide a better understanding of the socio-economic consequences of termination of the program for contracting Mexican farm labor. Specifically, the study deals with the controversy surrounding the program - the balancing of the needs of the growers for additional labor against the needs of domestic farm workers for regular employment at adequate wages, under acceptable working and living conditions.

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[2] California, Department of Employment, California Annual Farm Labor Report, 1965, pp. 19-21.

[3] U.S. Department of Labor, Regulations Governing Applications for Foreign Workers for Temporary Agricultural Employment in the United States under the Immigration and Nationality Act, December 19, 1964.

[4] U.S. Department of Agriculture, Economic Research Service, Termination of the Bracero Program, Agricultural Economic Report 77, June 1965, p. iii.

California was selected for the study because agriculture is particularly significant to the State's economy, and many unique features of its agriculture are now being profitably adopted throughout the United States. Moreover, it is the nation's highest user of hired farm labor. Thus the need to secure supplemental farm labor is greatest. To meet this need California has throughout its history turned to foreign sources - first the Chinese, then the Japanese, and finally the Mexicans in 1917.

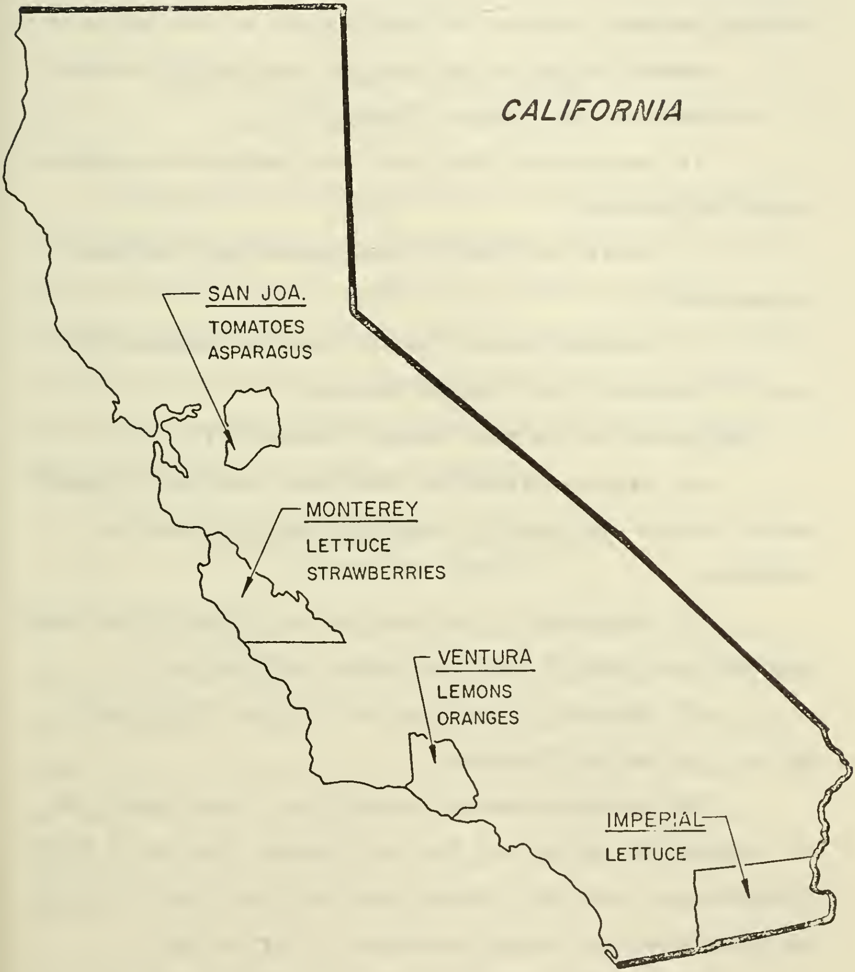
Characteristics of California's agriculture, giving rise to the need for large numbers of seasonal workers and thereby to the use of foreign labor to meet the need, are elaborated upon in Chapter I. Chapter II sets forth the details of Public Law 78 and subsequent regulations and requirements for obtaining foreign workers and describes the many different groups that make up the seasonal farm work force. Thus a breakdown of the California farm labor force into its various components, each with its own particular problems and special impact on the operation of the farm work force as a whole, sets the stage for the analysis to follow.

Solutions for economic problems common to a community or an area are often closely intertwined with the legislative process. The confirmation of a solution by legislators does not mean, however, that the differences in position of various groups have been clearly understood and the problem resolved in a manner that does not unfairly impinge on a particular group. Discussion may have to continue for a long time, as can be seen in Chapter III, before the issues become clarified and a better solution found.

It was thought that the entire discussion of short-run socio-economic effects might be lost on readers who have not had an opportunity to become aware of the unique economic and natural characteristics affecting agricultural labor use and the large, undefined sources adding to the supply of farm labor available. Hence, these important economic factors are explicitly stated in Chapter IV.

The research was conducted in Imperial, Ventura, Monterey, and San Joaquin Counties. These counties are areas in which contracted Mexican farm laborers constitute a significant part of the labor force. Data on the specific crops of asparagus, lemons, lettuce, strawberries, tomatoes, and valencia oranges are used in the analysis. (Location of these counties and crops are shown in Figure 1.) They are both labor-intensive and the principal crops of the chosen counties. Moreover, it is felt that these counties

FIG. I - SELECTED COUNTIES AND CROP ACTIVITIES


CALIFORNIA
SAN JOA.
TOMATOES
ASPARAGUS
MONTEREY
LETTUCE
STRAWBERRIES
VENTURA
LEMONS
ORANGES
IMPERIAL
LETTUCE

and crops are representative of broader areas so that the research results will have application to importation of foreign seasonal workers for agriculture in the future.

Among the topics for analysis are the following:

1. Problems of the growers (Chapter V)

a) adequacy of the farm labor supply for acreage under cultivation;

b) shifts in location and curtailment of farm production;

c) adverse effects on the growers' competitive place in domestic and foreign markets.

2. Conditions of the farm worker (Chapter VI)

a) factors affecting farm wage rates and comparison of hourly wage rates in agriculture with those in industry;

b) employment opportunities as indicated by annual earnings and lack of need for public assistance;

c) adequacy of housing facilities, field sanitation, and safety measures.

The contrast between conditions of employment of the industrial worker and the farm worker leads to a full discussion of the role unions have and might come to play in solving worker related problems in agriculture.

Chapter VII focuses on loss of job opportunities, on the depressing effect on wage rates, and on impairment of working conditions for the domestic farm labor force resulting from the existence of a supplemental farm labor supply.

PART III. EVALUATION OF DATA AND RECOMMENDATIONS

CHAPTER VII

SHORT-RUN SOCIO-ECONOMIC EFFECTS OF PUBLIC LAW 78: CONCLUSIONS

Throughout the Congressional debates there were assertions and reports of the economic effects of Public Law 78. Many of the statements on economic effects directly conflicted. The material below based on previous chapters is set forth as a basis from which to develop constructive solutions for dealing with what was admittedly a difficult and serious problem.

Imbalance between Agricultural Output and Demand

It is apparent that the most important economic effect for the farmer is the change in net income position. The California farmer has at his command legal machinery granted by both Federal and State governments to stabilize and improve his marketing returns. In the context of seeking a permanent solution to the economic problems farmers face, economists express doubts as to the validity of the present programs used. Economic analysis indicates that farmers should strengthen their bargaining position in the market place.

There has been excess production of farm commodities compared to the quantities demanded by domestic and foreign consumers at existing prices. While the absolute effect on output of the use of foreign nationals for farm work has not in most cases been large, the effect relative to the excess output is significant. Large expenditures have been thought necessary in order to provide a satisfactory level of income for farm operators and the members of their families. As is well known, several billion dollars have been spent to restrict agricultural output, to maintain agricultural prices, and to dispose of agricultural products acquired by the Federal Government through its price-support operations. Even so, net income of farm operators has declined over the past decade owing to lower prices and increased expenditures for capital and taxes.

To make the presentation of the economic effects on growers specific and not abstract, evaluation of the data will be briefly summarized under topical headings

Adequacy of Labor for Acreage under Cultivation

Acreage under cultivation for the six commercially important crops selected correlate with the bracero program as follows:

Tomatoes for processing.- Acreage under cultivation of this crop fluctuated widely from year to year indicating that labor supply was not the only factor involved. Willingness of available labor to do the "stoop labor" required may have been. During the years 1955-1959 when

Mexican contract labor was the important labor supply, the trend in tomato acreage was markedly upward. Acreage was lower in most of the years 1960-1964 when alien residents made up a significant part of the supplemental labor supply. In the years 1965-1967, with mechanization the acreage zoomed up from 34,830 acres in 1965 to 49,200, or slightly more than 40 percent.

Asparagus. - The trend in yearly acreage of asparagus under cultivation has been consistently down. Availability of Mexican nationals on a large-scale in 1955-1959 barely halted this trend.

Lettuce. - Acreage under cultivation of summer lettuce showed no clear trend during the period 1951-1967. On the other hand, the trend in acreage of winter lettuce has been steadily upward, even after the termination of the bracero program.

Stawberries. - The acreage of strawberries in the peak bracero years 1955-1959 increased from a five-year (1951-1954) average of 1,020 acres to 4,450 - an increase of 400 percent. After 1959 acreage of strawberries has declined as production shifted to Mexico.

Valencia oranges and lemons. - These crops take five years to bear fruit and could not be expected to show significant changes in response to short-term changes in labor supply. The increase in bearing acreage of lemons in early 1960's would indicate an increase in planting during the peak bracero years. Approximately the same number of acres were taken out of lemons after

1963. Acreage of valencia oranges during the period 1951-1967 decreased from 132,477 to 63,425, or slightly more than one-half, as a result of industrial and urban encroachment on existing orchards.

Shifts in Location and Changes in Production

Changes in production for the six selected crops do not correlate with termination of the bracero program. Variations in farm production were attributed to weather conditions according to government and university researchers. Production of lettuce and valencia oranges increased from 1964 to 1965 while production of canning tomatoes, asparagus, strawberries, and lemons dropped. In 1966 production of the crops was up except for strawberries and asparagus which are in a long-term trend downward.

Crop losses from termination of the program were reported. These could not be confirmed directly. For example, one large farm, Salinas Strawberries in Monterey County, would neither confirm nor deny losses when they were queried. The U.S. Department of Labor and a study at the University of California attributed crop losses to weather conditions. In any case, Congressman McFall in an interview said that labor was available, but growers' association did not ask for it because of the provision that workers must be provided at least 30 days of employment.[1]

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[1] Interview with Congressman John McFall, March 5, 1969.

Strawberry production had been shifting to Mexico since the late 1950's. It is believed that there has also been increased production of tomatoes in Mexico by American farm enterprises. This increase, however, could not correctly be viewed as shifting. Production in San Joaquin County alone increased by 25 percent in 1966 and was higher in 1967 than for any year of the period 1962-1965. Moreover, the Agricultural Attache at the American Embassy, Mexico City, said that the reported increase by American producers in Mexico could not be confirmed.[2]

Adverse Effects on the Growers Competitive Position in Domestic and Foreign Markets

Domestically, increases in the prices that consumers pay for fruits and vegetables were in keeping with the general increase in the cost of living. The largest part of the increases in prices went to middlemen. Farm values, that is prices paid to the farmer, only increased by approximately the amount of the increase in labor cost.

Prices of farm products from the United States have never been competitive in foreign markets. The increase in imports and decrease in exports of fruits and vegetables predates the bracero program.

As far as net income is concerned, farmers are in a price-cost squeeze. This situation does not arise from the cost of labor, but from expenditures for capital and increases in taxes.

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[2] Letter from Agricultural Attache, American Embassy, Mexico City, to U.S. Department of Agriculture, Robert G. Harper, March 15, 1966.

Foreign Labor and the Domestic Farm Workers

Public Law 78 placed the responsibility on the Secretary of Labor to see that the employment of braceros would not "adversely affect the wages and working conditions of domestic agricultural workers." Provisions for protecting domestic farm workers restricted the employment of Mexican workers to areas where the Secretary of Labor certified (1) that sufficient domestic workers who are able, willing, and qualified were unavilable; (2) that the employment of Mexicans would not adversely affect wages and working conditions of domestic agricultural workers similarly employed; and (3) that reasonable efforts had been made to attract domestic workers at wages, hours, and working conditions comparable to those offered the foreigners.

Factors Affecting Farm Wage Rates and Comparison with Those of Industry

During the period from 1951 to 1959, farm wage rates in California were stabilized in most crops. Some wage rates in activities employing Mexican contract workers were even depressed. The prevailing wage set unilaterally by the farmers had been self-perpetuating.

Agricultural wages were not only adversely affected in certain crop activities by employment of imported workers but in whole areas. A comparison of wage rates in those California counties and crops in which braceros were employed in large numbers shows that lower wages were paid there than in those in which Mexicans were not used in any great number.

Domination of the farm labor force by Mexican workers came increasingly to exist in many areas and crop activities of the Southwest. Farm associations created a need for the bracero. Growers then had a controlled labor market. The manner in which the Mexican contract program was administered removed the possibility of any sort of wage negotiations between employer and employee. Under conditions where an employer previously would have adjusted his wages upward, it was no longer necessary for him to do so. If the domestic worker did not accept the stated wage, the grower became eligible for Mexican contract workers on the grounds that there was a labor shortage.

The success which farmers had in controlling their labor cost and worker-related costs is explicity not only in the stability of the farm wage rates but also by comparison with increases in wages for production work in manufacturing. The decrease in the relative well-being of the farm worker compared to the production worker in manufacturing was much greater in California than on a nationwide basis.

As a result of wage hearings in 1956, the Bureau of Employment Security formulated the policy that the payment by users of braceros of wage rates which were significantly lower than those paid by nonusers would be considered as an indication of an adverse effect. Then in 1958 the "90-10" rule was enunciated. This rule required that at least 90 percent of the braceros had to have earnings of not less than fifty cents an hour during any biweekly payroll period unless the user could prove that more than ten percent of the braceros did not fulfill properly the requirements of the work contract.

Consultants appointed by Secretary of Labor James P. Mitchell in 1959 reported that "wage rates in activities employing Mexicans have lagged behind the wage levels for farm work generally ... between 1953 and 1958, the hourly farm wage rate in the United States increased 14 percent ... in areas using Mexican nationals ... the average rate either remained unchanged or decreased."[3] They recommended that the Secretary of Labor be authorized to establish wage rates for Mexicans at prevailing levels and at no less than was necessary to avoid an adverse effect on United States workers. This recommendation was implemented on July 13, 1960, with the creation of policy and procedures for setting minimum wage rates for bracero labor at "adverse effect" levels rather than at "prevailing rates."

If, as has been argued, this was not a simple case of maladministration, to be corrected by alteration of the administrative practices employed, a serious question arises as to whether the necessary conditions exist for an equitable program of meeting supplemental labor needs of agriculture by bringing in foreign workers.

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[3] U.S. Department of Labor, Consultants to the Secretary of Labor, Mexican Farm Labor Program Consultants Report, p. 1.

The 1960's provided a further test. Under adverse effect determinations a new program of establishing agricultural wages had been initiated. In many areas the upward rate adjustments were made. In other areas the farmers discontinued the use of Mexican nationals. Firm administration of the law resulted in better wages and curtailment of the program where the purpose of securing braceros had been low wages and the feasibility of exploitation, not the advertised reason of a shortage of domestic workers.

The U.S. Government by operating a farm labor program had intervened in the farm labor market, eliminated competition on the demand side and prevented the establishment of a competitive wage in a free market.

After the termination of Public Law 78 on December 31, 1964, the Secretary of Labor felt it necessary to continue to issue adverse effect rates. Moreover, the United Farm Workers Organizing Committee has been successful in negotiating contracts with some of the large grape growers which included wages above the adverse effect rate.

Employment Opportunities

Public Law 78 fed on the unemployment and poverty in Mexico and created unemployment in the United States. Rural unemployment and underemployment which have always been high were made higher.

Termination of Public Law 78 definitely improved the opportunities for employment of the domestic workers. No longer did domestic farm workers have to migrate to other areas or seek jobs in activities in which the Mexican national had not depressed wages and conditions of employment below standards that were tolerable to him. No longer did the grower have the alternative between a less costly single Mexican national who could be housed in a barracks and use bathing facilities without any partitioning for privacy, and a domestic worker with a family who had to have at least minimal facilities. While green card holders and wetbacks quickly took up many of the job opportunities, the domestic workers still benefited, as shown by a lower unemployment rate and a marked increase in the number of days worked.

Adequacy of living and working conditions

There is also evidence that the American farm worker will inherit improvements won for the foreign worker. The Mexican program focused attention on the plight of the farm worker. Termination of the program brought increased efforts in the areas of housing, field sanitation, and safety as a means of attracting and keeping a domestic farm work force.

Effect on Farm Organization

No thought was given in Public Law 78 to the effect on the competitive position of the small farmers although it is a point that came up each time in the Congressional hearings.

There is no doubt that the bracero program provided certain real economic advantages for corporation-type farms over the family-type farm. (According to the 1950 Census of Agriculture, 51.9 percent of U.S. farms used no hired labor.) Employment of Mexican contract workers was largely concentrated in five states - Texas, California, Arkansas, Arizona, and New Mexico. This concentration of hired labor meant lower labor costs for the large farms and permitted sharp increases in production. Consequently, the prices to all farmers were lower, but the smaller margin of profit on the increased volume of production by the large growers compensated for the price reduction. Another consideration was that the family labor was only worth the lower wage rate of the bracero labor.

President John F. Kennedy in signing the extension of Public Law 78 in 1961 said:

> The continuance of a program to import agricultural workers is dangerous -

> Because it has an adverse effect upon the overwhelming majority of our farmers whose enterprises are small or moderate sized - and who must compete with the handful of agricultural enterprises that are able to exploit cutrate foreign labor.[4]

The demands for hired labor are generated by relatively few farms in California. The largest farms (sales over $40,000) employed 86.6 percent of the hired labor in California in 1964. Other farms (80.1 percent of the total) accounted for 13.4 percent of the farm labor used.[5]

The contrast of these proportions reflects the basis for expecting a significant economic advantage for the largest farms. Such labor then is employed, for the most part, not by the small independent family farmer, but rather by processing companies, employer associations, and big growers.

This economic disadvantage of the small farmer was emphasized repeatedly in Congressional hearings by such critics of the bracero program as Senator McGovern:

> But as we move into the type of factory-in-the field agriculture which I think the foreign labor program has encouraged, we are undercutting the advantage that the independent farmer has in providing his own labor. We are putting him into competition with the larger units that can employ this low cost foreign labor on a large scale.[6]

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[4] Statement of President John F. Kennedy, Office of the White House Secretary, October 4, 1961.

[5] U.S. Department of Commerce, Bureau of the Census, Census of Agriculture: 1964, Vol. I, pt 48, California, pp. 50-51.

[6] U.S., Congress, House, Committee on Agriculture, Mexican Farm Labor Program, Hearings, 86th Cong., 2d sess., 1960, p. 171.

Holding down the wage rates of hired labor had the effect of holding down the value of the labor of the small farmer. Coupled with declining farm prices from large supplies of vegetables and fruit grown by hired labor paid 50 cents per hour and the need for increasing expenditures for capital and taxes, many small operations were unprofitable and sold out to larger farms.

The total number of farms in California decreased by more than a third between 1954 and 1964. This was a more rapid decline than for any previous decade. On the other hand, there was a record rate of growth in size of farms, as measured by the value of farm products sold. The sharpest decline was in the number of small farms with less than $2,500 of marketings. Farms with sales of $10,000 and over increased by more than a third.[7] Data on the trend in the size of farms after 1964 will not become available until 1974.

In summary, advantages to the growers of Public Law 78 are doubtful. Disadvantages to the domestic farm workers were clear cut and significant in that wage rates were stabilized, employment opportunities were lost, and working conditions impaired. Effects of the termination of Public Law 78 were only minimal and transient on the growers. On the other hand, domestic farm workers benefited from the termination.

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[7] U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, 1954, 1964, and earlier issues.

[From the New York Times, May 4, 1969]

UNIONS DEPLORE INFLUX OF MEXICAN LABORERS ALONG THE BORDER

(By Homer Bigart)

COACHELLA, Calif.—Every weekday in Calexico, 100 miles south of here, thousands of Mexicans stream across the border at dawn looking for work.

And every evening, weary after long hours of stoop labor in the field or at menial tasks in the towns, they troop back to Mexicali and their homes.

The same phenomenon is observed all along the frontier area from San Diego to Brownsville, Tex.

It is welcomed by farmers, ranchers and fruit growers, by gringo housewives and service industries and by Chambers of Commerce and the new factories that have been lured south to the border by the promise of an endless supply of cheap labor.

But the influx is deplored by labor unions and by the five million Mexican-Americans who live in the Southwest.

The commuters lower wage levels and depress working conditions. Most of the border area has a surplus of low-skilled labor, and unemployment is high.

Nowhere is the alien commuter traffic more resented than in the Coachella Valley, 125 miles southeast of Los Angeles.

Here aliens were used as strikebreakers last year when César Chavez and his United Farm Workers Organizing Committee tried to extend the California grape strike.

IMPACT ON GRAPE STRIKE

Mr. Chavez and his predominantly Mexican-American band of strike organizers were swamped last year by a flood of "green carders" brought up from the border on trucks by the grape growers.

The green carder is a Mexican citizen who says he has a job in the United States and who applies at an American consulate for a permanent residence visa.

But he is not obliged to live in the United States or seek naturalization, a Justice Department spokesman said recently.

To qualify for employment in the United States, the applicant is supposed to show that his work would "not adversely affect the wages and working conditions" of United States citizens similarly employed.

Enforcement of this provision would keep green carders off the farms, for the agricultural labor market is usually glutted.

According to a recent staff report of the United States Commission on Civil Rights, most of the 684,533 Mexican aliens holding green alien registration cards (as of Jan. 1968) actually reside in this country.

But the commuters, estimated anywhere from 40,000 to 150,000, "look upon their green cards as nothing more than work permits," the report said.

BAR ON STRIKEBREAKING

Use of green carders as strikebreakers was supposedly barred in 1967 by an amendment to the immigration and naturalization regulations.

But the Coachella Valley grape growers were able to obtain an injunction last year preventing immigration authorities from enforcing the new ban during the grape harvest.

A Federal judge said the ban violated the equal protection clause of the 14th Amendment. His injunction broke the strike.

Another crisis will develop before long when Mr. Chavez calls for a fresh confrontation with the table grape growers of Coachella.

On April 12 Mr. Chavez visited Coachella and said he would call a walkout of vineyard workers unless the growers agreed to negotiate a contract.

No date was set—"It's one of the few secrets we have," Mr. Chavez told reporters—but it would probably coincide with the harvest, which starts in May and continues into July.

Both sides, U.F.W.O.C. and the growers, are conducting propaganda campaigns along the border. Through paid commercials on two Mexican radio stations, U.F.W.O.C. is asking Mexicans to stay away from Coachella. The growers are distributing leaflets encouraging commuters to work in the vineyards.

BEDRIDDEN ORGANIZER

For the last eight months, Mr. Chavez has been forced to spend most of the time bedridden in his tiny cottage in Delano, a town in the San Joaquin Valley 250 miles northwest of here, where the strike began four years ago.

The gentle, ascetic apostle of nonviolence, who went on a 25-day fast last year to deter militants from rioting, is suffering from a painful back ailment.

The Kennedy family sent out Dr. Janet G. Travell, personal physician to John F. Kennedy before and during his tenure in the White House. Dr. Travell eased Mr. Chavez's muscle spasms and discovered a probable source of the trouble—his right leg is considerably shorter than the left.

Directing the strike at Coachella is a Chavez lieutenant, the Rev. James L. Drake, a United Church of Christ clergyman, who said the situation "looks a little frightening."

"This is tough country," said Mr. Drake, who was brought up in the desert town of Thermal nearby. "It's close to the border, and there is more disregard for human life."

An unusual aspect of the grape strike has been the difficulty of organizing several thousand aging Filipino workers who were brought to California as single men in the 1920's and, according to Mr. Drake, were warned by growers that they would be deported if they ever tried to marry a white girl.

FILIPINO PLIGHT CITED

These graying bachelors—still referred to by growers as "my Filipino boys"—were perpetually frightened not only of marriage but also of being ejected from their sack in the migrants' barracks if they dared organize, Mr. Drake said.

Many of the Filipinos kept fighting cocks, he added, and would inquire piteously: "What will happen to my chicken if I join the union?"

"They are really slaves, just shells of men," Mr. Drake said.

This year the Coachella strike will be a little better organized, Mr. Drake said, explaining that last year all the early effort went into the California Presidential primary campaign of Senator Robert F. Kennedy who had promised to do something about the green carders."

Mr. Chavez, however, warned of a long tough fight.

"There are no short cuts," he said. "We won't fall into the trap of violence. Non-violence is the only way to achieve lasting gains.

"When you are in a movement full of pent up emotions, the progress may seem slow. But we must remain free and easy, making light of victory, making light of defeat."

Mr. Chavez said the boycott remained the best weapon against the grape growers. But he and his committee also hoped Congress would curb the green card strikebreaker.

Senator Edward M. Kennedy, Democrat of Massachusetts, who is a member of the Senate Subcommitte on Migratory Labor, has introduced a bill requiring that each commuter alien be certified every six months by the Labor Department that his presence does not depress wages and working conditions of American workers similarly employed. Under its terms, the commuter's labor clearance would be revoked if he engaged in strikebreaking.

Senator Walter F. Mondale, Democrat of Minnesota, the subcommittee chairman, recently visited a border crossing on the Rio Grande near McAllen, Tex., disguised in a battered pair of khaki trousers and an old sweater. Senator Mondale reported seeing hundreds of Mexicans streaming into the United States waving green cards he suspected might be counterfeit.

To stop this "hemorrhage of people," which he felt was inflicting a permanent economic depression on south Texas, Senator Mondale asked Arnulfo Guerra, a Mexican-American lawyer who is an authority on immigration, to draft a bill obliging green carders to live in the United States.

The Senator also noted that many commuters were United States citizens who apparently found the cost of living cheaper on the Mexican side and he wondered if Congress had the power to limit their movement.

INTERFERENCE OPPOSED

The State Department has opposed interference with the commuter program.

It would deprive many Mexican nationals of their earning power, reduce trade along the frontier and perhaps cause the Mexican Government to retaliate, the State Department feels.

Meanwhile attempts by Mr. Chavez to organize farm workers in Texas have been completely frustrated by the ready availability of cheap labor, by court injunctions and by alleged harassment from the Texas Rangers.

Efforts by other unions to organize frontier industries, including El Paso's new textile factories (where the wage rate is little more than the minimum required by the Fair Labor Standards Act) have also collapsed. Thousands of commuters are employed in garment mills that have sprung up in the last few years.

"The number one problem is the green carder," said James D. Givens, secretary-treasurer of the El Paso Central Labor Union and vice president of the Texas AFL–CIO. "I guess 25,000 commute from Juarez."

"We feel sure the plants tell these commuters they'll lose their green cards if they join the union," Mr. Givens said.

William L. Kircher, director of organization for the American Federation of Labor and Congress of Industrial Organizations, charged that the immigration service had "turned a blind eye to wholesale violations of the green card."

"COMMUTER TICKET" SCORED

"In its pure and simple form, the green card is a demonstration of the United States Open Door policy on immigration," Mr. Kircher said. "And since the ALF–CIO believes in liberal immigration we are for the concept of the gren card.

"But in practice the green card has been used as a commuter ticket to cheap jobs, strike-breaking, scabbing, sub-standard wages, all the things that undermine the United States economic base."

Jerome Cohen, attorney for Mr. Chavez's organizing committee, said:

"Until the Immigration Service begins to bring criminal charges against the labor contractors and growers who harbor and conceal illegal immigrants in violation of Federal laws. the Immigration Service won't be doing its job. Now it's serving as a shuttle system for illegals."

A spokesman for the Immigration and Naturalization Service said the green card (actually, it's now baby blue) was becoming harder to get.

Starting last July, the Government put a 120,000-a-year quota on permanent residence visas for immigrants from the entire Western Hemisphere. A Mexican has to wait about a year to get one, he said.

UNITED STATES DISTRICT COURT,
Del Rio, Tex., March 27, 1969.

HON. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: Enclosed is a clipping from the San Antonio Express Thursday, March 27, 1969, which caught my attention this morning.

I surely hope you are successful in getting a change in the law effected. My concern is reflected by the attached xerox copy of a letter I wrote January 18, 1965, to the Honorable Nicholas Katzenbach. Similar letters were written to Senators Yarborough, Tower and others in an effort to get something done. In the border districts, we have a problem of wetback smuggling. Attached is a newspaper account of a case that I finally disposed of here yesterday. The "slave traders" do not help our public relations with our neighbor to the south.

I have also read with interest the observations of Senator Walter F. Mondale in connection with his observation of border crossings between Hidalgo and Reynosa, Mexico, as described in the enclosed clipping from the Del Rio paper Wednesday, March 26, 1969. I wish you and Senator Mondale would visit El Paso some time, and make a similar observation of what happens early in the morning and late in the evening in that city at the International Bridges.

As a last thought, I might mention that the ability of farmers, ranchers, manufacturers, housewives, plumbers, builders, electricians, etc., to hire wetback labor in the border areas is an unfair discrimination against the same people who are in those businesses in areas where wetback labor is not made available. The cost of production is not comparable nor is the profit the same.

I might mention, also, the token prosecution of aliens is not a way to achieve effective observance of the law or respect for the law. For the Border Patrol to spend a lot of money to apprehend a man (frequently from the same ranch or farm) only to put him across the river, and then beat the Immigration back, like a cat reentering the screen door immediately after it is put out, achieves nothing but a "Car 54" image of law enforcement officers. The Department of Justice or the Immigration Service do not seem to have any policy as to when a repeated offender is to be prosecuted, nor do they have any means of prompt identification of the individual through the FBI to determine his prior record, federal or *state*.

The Immigration Service does keep a record of place of apprehension of aliens. When I reviewed a portion of their files, I found that the same ranchers and farmers repeatedly employed aliens, and in many instances the same alien. If the law would just provide a fine for the U.S. Commissioner (Magistrate) to assess, say up to $200.00, like a traffic case, the employers would soon fall in line in refusing employment. A $25.00 fine, plus the trouble and notoriety incident to the offense, would soon take the profit out of it for the employer and I think we would then find that the employer would be like the pedestrian or the motorist, he would only cross the street when the lights indicated "green." No innocent man could complain because the burden would be on the government to prove *knowingly*. If an employer doesn't know an employee is a wetback initially, the employer would not be long in finding out. The illegal entrant carries his stamp in many ways, readily identifiable by the most flagrant exploiter.

On the chance you may be interested in recommendations, I attach a copy of a letter of June 27, 1966, from our local U.S. Commissioner in El Paso, to Senator Tydings, because it mentions some recommendations for statutory changes in connection with the Immigration law enforcement problem.

I am taking the privilege of making known to you my sentiments because I want you to know my reason for wishing you success in your endeavors in this area.

With kindest personal regards, I am

Cordially yours,

D. W. SUTTLE,
United States District Judge.

Enclosures.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF TEXAS,
El Paso, Tex., January 18, 1965.

Hon. NICHOLAS KATZENBACH,
Attorney General of the United States,
Washington, D.C.

DEAR ATTORNEY GENERAL KATZENBACH: With your permission, I would like to review with you the problem of the congestion of our border United States District Courts with illegal entrant cases, the cause, the result, and what, if anything, can be done about the matter.

The cause lies in the proviso contained in Section 1324 of Title 8, United States Code Annotated, reading, in substance, as follows:

> "(a) Any person * * * * who * * * * (3) wilfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or
>
> "(4) wilfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of any alien * * * * not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Enough of our United States citizens are willing to exploit the need, the poverty, the hunger, the ignorance, and the status of these illegal entrants at the rate of $2.00 to $2.50 per day, to encourage the victims to keep coming. So long as these unfortunate people can find employment here they will continue to come, and until the employers are deterred the employment will continue. The stream or flow of applicants would cease if the source of employment would dry up. All that is needed is for the potential employer to desist from the employment of the alien!

The result of present practices of the principals is a curious one under the law—the exploited ends up being apprehended, tried and imprisoned as a felon, while the exploiter or profiteer goes free with implied approval of his conduct. The situation is analogous to the evil of child labor, outlawed many years ago.

The enforcement cost to the Immigration Service and the Courts is appalling. From the apprehension to commitment there are some 80 forms alone to be filled out by the Service. Add to this the cost of administrative deportations, bus, train and air lifts, guards, trials and penal institutions, and you have the $2.00 or $2.50 per day "cheap labor" costing our government a fantastic premium, not included as an A.S.C. benefit. The local employer saves money by hiring the illegal entrant, but the same man costs the government far more than the employer saves that uses him.

Aside from the immoral aspect of the conduct of the principals, you have the social impact on depression of the wage level among our own native born hand labor people. the cost of unemployment payments, and other known and unknown social and economic factors. No United States born citizen can compete with the illegal entrant labor market and support his family and send his children to American schools on a 25 cents per hour income.

Incidentally, but for the work of the Immigration Service, the United States would be flooded with illegal foreign labor and foreign felons. As it is, many of those convicted in our Courts are found to have venereal diseases, tuberculosis, and bad criminal records, both in Mexico and the United States. These are some of the same people who have evaded immigration screening and obtained work on home places in this country.

Now as to the solution. After much thought, consultation with Senior United States District Judge R. E. Thomason, of El Paso, Chief Judge Adrian A. Spears of San Antonio, United States District Judge Homer Thornberry of Austin, United States District Judge Leo Brewster, of Fort Worth, Immigration officials and the United States District Attorney here, I have come to the conclusion that the remedy lies in the amending of Section 1324 of Title 8, United States Code, above quoted, in one of the following ways:

(1) Eliminate the "South Texas" clause or proviso;

(2) Reduce the offense to a misdemeanor to "harbor" the felon;

(3) Provide anyone found to have employed aliens on two or more successive occasions shall lose the benefit of the proviso or exception as to "harboring";

(4) Imposition of some kind of sanction to prohibit the collection of A.S.C. payments or other forms of agricultural benefits.

You can probably think of other amendments or methods, and, of course, any and all suggestions to remedy the situation should be considered and, if acceptable as helpful to correct the situation, adopted.

For your information and consideration I enclose, also, a copy of my letter of date January 11, 1965, addressed to Mr. Herbert Nice, District Director, Immigration and Naturalization Service.

Please let me hear from you as to what, if anything, you think can be done about the problem.

Sincerely yours,

D. W. SUTTLE, *United States District Judge.*

June 27, 1966.

Re: S. 3475, Federal Magistrates Act of 1966.

Hon. JOSEPH D. TYDINGS,
Chairman, Subcommittee on Improvements in Judicial Machinery,
Senate Building
Washington, D.C.

Dear SENATOR TYDINGS: Pursuant to the request of my superior, the Honorable D. W. Suttle, United States District Judge for the Western District of Texas, I am submitting some comments for what they may be worth on the proposed changes in the U.S. Commissioner system. I have not had an opportunity to actually discuss the proposed legislation with Judge Suttle because he is in Del Rio, Texas, holding Court and I am in El Paso, but I am sending him a copy of this letter, and he may wish to disclaim my views once he sees them.

First let me say I think the Bill as a whole is an excellent piece of work, and which is obviously the result of a great deal of thought and study, and which should result in a substantial improvement over the present situation. I am sure that the personal views of the various commissioners throughout the nation will depend to some extent on how this bill would favorably or unfavorably alter their present positions. For those with fairly small case loads, there will be little or no change since they will all probably be deputy magistrates and receive substantially the same amount of money in salary that they have received in the past under the fee system. The personal reaction of those with heavier case loads, however, will depend on whether they will be made deputy magistrates to be paid the maximum of $11,000 or close to it on a part-time basis, or somewhere close to the $22,500 maximum as a full time United States Magistrate. In other words, those with substantial case loads either present or contemplated, will take a look at their hole cards in deciding whether or not they would want to be appointed to the new position, depending upon how it will affect his overall income. For example, a Commissioner who presently makes close to the maximum of $10,500 under the fee system on a part-time basis and has a law practice which makes him $7,500 or more in addition to what he gets as commissioner will probably not want to be appointed as a full time United States Magistrate at a salary of, say, $12,500 when such appointment would preclude him from engaging in any outside practice of the law. These Commissioners with substantial case loads will, therefore, most likely all want to either be appointed U.S. Deputy Magistrates at the maximum and still be allowed to practice, or take the full time job at or close to the $22,500 maximum as United States Magistrate with no outside practice. I realize that this is a problem which the Administrative Office of the U. S. Courts will have to resolve in conjunction with the various District Judges, Judicial Councils of the Circuits and the Judicial Conference of the United States if the Bill is passed, but I thought it worth mentioning to you as a context out of which most of the comments by the present Commissioners and perhaps District Judges will come.

Addressing my remarks more specifically to what effect this Legislation will have in this immediate area of the nation, I want to discuss the most obvious situation which this legislation could greatly improve. I have noted in several instances in the transcript of proceedings of hearings before the Committee that the numerous immigration cases on the southern border of the United States was mentioned as a type of case which the Commissioner could properly dispose of if his petty offense jurisdiction was expanded so as to authorize him to try such cases occuring off of as well as on government reservations. The Federal Magistrates Bill as written does hold out a promise of alleviating *part* of this problem as it now stands by authorizing the new Magistrate to try the immigration cases where the defendant is charged with any offense carrying no more than one year penalty. If this Bill is truly intended to relieve the District Court of these immigration cases of the less important type, however, it appears to do only half of the job. My strongest suggestion is to couple the Federal Magistrates Act of 1966 along with some amendments to the immigration laws which would relieve the District Court of virtually all of the immigration cases, instead of only about half of them, as the proposed legislation would now do. To be more specific, among all of the immigration charges which are now filed the only ones which *would* be triable before the Magistrate if the legislation passes, are those in which the offense alleged is a violation of Title 8, United States Code, Section 1325, which is commonly know around here as the simple illegal entry statute. However, at present this constitutes only a third or less of the immigration case load.

In order to give you a little more background about the immigration problem as a whole, it is important to know that approximately 700 cases are filed a year by the Immigration Service before the U.S. Commissioner in El Paso. The situation on the border here is such that these are made up ordinarily of only the more aggravated cases, because there are simply too many of them to file on all who are arrested. For example, during the month of May, 1966, the Immigration Service arrested approximately 1200 aliens in the El Paso area alone, filing on only 106 before me. Out of these 106, we had a general variety of the various immigration violations, including 18 USC Section 1546 (false or altered immigration cards), with a maximum of 5 years; 8 USC Section 1326 (illegal entry after deportation), with a maximum of 2 years; 8 USC Section 1325 (illegal entry), with a maximum of 6 months and a $500.00 fine; 18 USC Section 911 (false claim of U.S. citizenship), with a maximum of 3 years; and 8 USC Section 1324 (alien smuggling or transporting), with a maximum of 5 years. Ordinarily, about one-third or less of the total number of cases filed in any one year or month are the 1325 cases. All of the other cases compose the other two-thirds or more, and they are all felonies in that they carry over a year penalty. The Immigration Service could actually file on the 1326 cases—illegal entry after deportation—as 1325's but the maximum penalty would only be 6 months, and some of them definitely deserve more time than that, although most of them could fit properly into a category where the sentence would be up to a year maximum. By amending Section 1325 to allow a maximum penalty for the first offense of up to one year, the Immigration Service could then file probably 75% and possibly more of all of the cases they now file. If this was done and the Statute amended so as to include *attempts*, they would probably file almost all of their immigration cases under this Section, regardless of the type of conduct actually involved, because the Statute is so broad that it is capable of accurately describing virtually any type of conduct which the Immigration Service wishes to prosecute for. For example, the alien smuggling or transporting cases, 8 USC 1324, are sometimes filed on for the lesser offense by charging the alleged transporter or smuggler with aiding and abetting the alien in violating Section 1325. I would suggest that in order to allow the Immigration Service to file the vast majority if not all of the cases they wish to prosecute before the Magistrate that Section 1325 be amended to read as follows (with the proposed amended words underlined):

> Any alien who (1) enters the United States at any time or place other than as designated by Immigration Officers, or (2) eludes examination or inspection by Immigration Officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact. *or attempts to do any of the above acts*, shall for the first commission of any such offense, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than *one year*, or by a fine of not more than $500.00, or by both, and for a subsequent commission of any such offenses shall be guilty of felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000.00, or both.

An excellent illustration of this problem occured only this morning before me. We had a case in which a Juarez, Mexico, taxi driver attempted to smuggle in an alien by concealing her in the trunk of his cab. They were apprehended at the port of entry prior to actually being admitted to the United States. If the Magistrates Act were in effect and 8 USC 1325 amended so as to include attempts, they could have filed on the smuggler for aiding and abetting the alien in *attempting* to elude examination or inspection by immigration officers, in violation of 8 USC 1325 (2) and Section 2 of Title 18. The alien would be filed on for the attempt and both cases could be disposed of before the magistrate. As it stands now, they could not charge him with aiding and abetting the commission of the lesser offense because 1325 does not make it illegal to merely attempt to do any of the acts mentioned. He was charged with the more serious offense of illegally attempting to bring the alien into the U.S. under 8 USC 1324(a)(1), although his sentence will probably be no more than 6 months and more likely will be about 90 days, in the event he is convicted. The alien, although violating no law, had to be filed on and placed under bond as a material witness in order to secure her attendance in the event of a trial. She could be charged with 1325 if it was amended to include attempts and this would avoid the oft-heard critcism about the Federal Courts detaining people in jail who are not charged with and did not violate any law. If no bond is required of these aliens as witnesses, we would never see them again and the case most likely is lost forever.

At the present time, even those immigration cases which are felonies ordinarily receive a sentence of a year or less. In some very aggravated cases, of course, the 1326 cases do receive the maximum sentence of 2 years. The Immigration Service could still continue to file these more aggravated cases at the District Court level.

The reason I have added the word "attempt" in the suggested amendment to 1326 is that such language would allow Immigration to file virtually all of the cases they now file under that Section where common experience taught them that the defendant would probably not receive more than a year even if prosecuted for a more serious offense in the District Court. The conduct involved often fits not only one of the more serious felony statutes but also is aptly described by the language of one of the subsections of 1325. For example, anyone who makes a false claim of United States citizenship while *attempting* to gain entry into our country from Mexico would obviously violate Section 1325 (3) if that Section were amended so as to include an attempt to obtain entry as an offense. If that were done, the man could be filed on under Section 1325 and his case disposed of before the magistrate as an offense carrying a year or less, rather than taking up the District Court time when his sentence will probably be less than a year in such Court. Another example would be the false or altered immigration card cases, 18 USC, Section 1546, which carries a 5 year maximum, in that anyone who presents such an altered or false immigration card at the border while attempting to obtain entry also would violate Section 1325(3) if amended as suggested. The reason these false card cases are filed on even though the entry is not accomplished at the time the man is apprehended with the false card at the port of entry is that most of these cards are made in such a professional manner that they often get by at the port of entry on numerous occasions and the individual may have used the card for years, successfully entering into the United States, residing and working here, and is simply caught at the bridge upon a return trip after a little visit back in Mexico for a while. As an ex-prosecutor, I am sure you can see why the government has a much easier case to prove that he attempted to obtain entry by presenting the false card at the time he was actually apprehended rather than require the government to prove that he actually did obtain entry with it several months back while residing here, which the government obviously never knew about when it was going on, and would be hard put to prove.

If the increasing of the penalty under 1325 was deemed too harsh or potentially too expensive because the defendants would then be entitled to appointed counsel under the Criminal Justice Act of 1964 (which petty offenders are not entitled to now), then I suggest nevertheless that the law be changed to include attempts, and that perhaps 1326 be amended to include a first offense with a maximum of 1 year. In any event, I feel that some legislation in addition to what you have proposed in the Federal Magistrates Act of 1966 is needed to fully carry out the intent of your Act in trying to relieve the U.S. District Courts along the southern border of the United States from the heavy load of immigration cases which often carry heavy penalties but in which heavy penalties are very rarely ever passed out.

I do not know whether or not your Committee intended to look into all of the side effects which your present Bills has, but I think now is the time and the place to cure this immigration case load problem and I fail to see how anyone would really have any objection. I think without specifically doing this in the immigration area, you are only half solving the problem insofar as the Federal Courts along the border is concerned.

I believe my background of experience in the Federal Courts here qualifies me to express this opinion because I have spent the vast majority of time since my graduation from Law School in the Federal Courts. Upon my graduation from the University of Texas Law School, I served as law clerk to United States District Judge R. E. Thompson for two years, served as Assistant in charge of the United States Attorney's Office in El Paso from 1961 to early 1965, after which I served as part-time law clerk to Judge Suttle, and was appointed United States Commissioner here in El Paso on January 31 of this year. The Administrative Office of the U.S. Courts and the Department of Justice will both be able to tell you from statistics in their files that this El Paso Court is one of the busiest Courts in the country, not only because of the immigration cases, but because of a huge variety of other more serious federal criminal cases and a substantial number of civil cases. As part of the legislative history supporting the creation of two additional judgeships in this District, the report of the Senate Judiciary Committee revealed that the Western District of Texas as a whole had the second largest criminal case load in the country, taking into account weighted and non-weighted cases. Out of all of the Western District of Texas, the El Paso Division has more than half of the total criminal cases, meaning that *one* division handles as many criminal cases, both immigration and miscellaneous, as all *other* five divisions combined. Approximately half of the criminal cases are filed by the Immigration Service. If the District Courts here could be relieved of this immigration problem *as a whole*, the Courts could devote their time to the more important business involving suits between citizens of our own country.

I am hopeful that these suggestions will be of assistance to you in carrying out the full intent of what I think your excellent Bill hopes to accomplish. If you have any questions of me concerning this or any need for further explanations, I will certainly be glad to help in any way possible.

Thank you for your interest in this matter.

Sincerely yours,

Fred J. Morton.

[From the San Antonio Express, Mar. 27, 1969]

ALIEN SMUGGLERS GET 43 YEARS

DEL RIO.—Three men involved in an international smuggling ring of Mexican aliens were sentenced here Wednesday to a total of 43 years in prison.

John T. Eguia, 31, of Dilley, the admitted leader of the ring, received a total of 23 years after he had pleaded guilty to five cases including the Sept. 30, 1968 transportation of 47 aliens from Eagle Pass to San Antonio which resulted in the death of three of the aliens.

Receiving a total of 10 years each in the same case were Carlos Becerra, 29, of 2719 Durango St., and Joe Roy Campos, 30, of 523 Cumberland St., both in San Antonio.

A fourth suspect involved in the smuggling ring, Leandro Sada-Gonzalez, 19, of Dilley, was committed to the custody of the U.S. attorney general for an indefinite period as a youthful offender. Sada-Gonzalez had pleaded guilty to two counts of transporting aliens after he was arrested last July 29 near Spcok, Tex., with a camper loaded with 15 aliens.

All four had entered their guilty pleas here before U.S. Dist. Judge D. W. Suttle on Feb. 17. Judge Suttle handed down the sentences Wednesday afternoon in a docket crowded with other alien cases.

The cases against Eguia, Becerra and Campos, however, were so technical that it took some two hours to dispose of them despite the fact that the cases had been outlined in detail in the Feb. 17 trial.

In the Sept. 30 case in which 47 aliens paid $50 to be transported to Chicago but ended up in San Antonio in an unventilated van truck, Eguia had pleaded guilty to 10 counts. He received three years on the first five counts to run consecutively for a total of 15 years. On the second five counts, Eguia received three years on each count to run concurrently, still giving him only 15 years to serve on this case.

On four other separate cases, he received a total of two years each to run consecutively after he had served the 15 years, giving him a total of 23 years to serve on all five cases.

Becerra had pleaded guilty to 10 counts and Campos to five counts on the Sept. 30 case. They received a total of 10 years each.

Families of all of the defendants were in court Wednesday and watched as they were turned oved to the custody of deputy U.S. marshals.

[From the Valley Morning News, March 1968]

ILLEGAL BORDER CROSSING BLAME CONTROVERY AIRED

HIDALGO, TEX.—Sen. Walter F. Mondale, D-Minn., and Bob Sanchez, chairman of the Migratory Labor Committee for the American GI Forum, agree many persons cross the Mexican-Texas border here illegally.

What they disagree on is who is to blame for the illegal crossings.

Sen. Mondale, after spending about two hours watching border crossings between Hidalgo and Reynosa, Mex., last week says immigration officials are lax in checking cards which allow Mexicans to cross the border and work in the United States.

Sanchez says the hands of immigration officials are tied by federal regulations.

Mondale, the new chairman of the migratory labor subcommittee, said Tuesday he saw a steady stream of people crossing the bridge in Hidalgo and he said he felt many were crossing illegally.

"It's hard to believe all those people who stream across the border each morning are living in the U.S.," he said after his visit last week.

Mondale said many holders of the so-called "green cards," which allow Mexicans to work in the United States, get the cards illegally.

"There are businesses and growers who benefit from this system and there is evidence of less-than-total enthusiasm for enforcing what rules we have."

Sanchez, while agreeing with Mondale that many persons cross the border illegally, said "only a new attitude in Congress and in the Department of State" can control the traffic.

"Our immigration agents can't do more than they are doing unless they have the support of the highest level of the administration," Sanchez said. "They do not have it at the present time."

He said present Washington policy allows commuters from Mexico to "come and go they please."

Sanchez said the State Department "doesn't want to injure relations with Mexico," resulting in stripping immigration agents of the power to stop illegal border crossings.

TIGHTENING OF RESTRICTIONS ON IMMIGRANT MEXICAN LABORERS

WASHINGTON.—Sen. Edward M. Kennedy, D-Mass., and Rep. Michael A. Feighan, D-Ohio, introduced legislation Wednesday that would tighten restrictions on immigrant Mexican laborers.

"This alien work force is a major factor contributing to the grinding poverty, high unemployment and low wages in the border areas," they said in a joint statement.

The legislation would require that commuter aliens "must be certified every six months by the Department of Labor that their presence in the United States to seek or continue employment does not adversely affect the wages and working conditions of American workers similarly employed."

The bill also calls for criminal prosecution of individuals who willfully and knowingly employ aliens in the country illegally.

CESAR CHAVEZ SUES ATTORNEY GENERAL

DECEMBER 1, 1969.

Cesar Chavez, Director of the United Farm workers Organizing Committee, AFL–CIO, announced today that suit had been filed against Attorney General John Mitchell and two top officials of the United States Immigration and Naturalization Service in the U.S. District Court for the District of Columbia to "bring an end to governmental policies permitting table grape growers to illegally use Mexican nationals as strike-breakers in the fields of California."

Andrew Imutan, Vice President of the United Farm Workers Organizing Committee, and Manuel Vasquez, the Union's Washington Representative, speaking for Cesar Chavez, discussed the suit at a press conference today. They read a statement from Cesar Chavez:

> "I have no dispute with the thousands of Mexican nationals who are in the United States as green-carders an dwho live and work here. But to bring permanent residents of other countries into the United States to break our strike on the basis of a card or piece of paper they received 10 or 20 years ago is illegal and unfair. I don't understand a government which cries for law and order and refuses the protection of its laws and regulations to its most destitute people. I hope the courts will tell the Immigration Department what we have told them for years—that farm laborers deserve the protection of the laws as well as the agricultural interests they seem so often to represent."

The suit was filed by the United Farm Workers Organizing Committee, AFL–CIO, and Robert Bustos and Lupe Murquia, two farm workers, on behalf of all farm laborers in the southwest United States who are citizens or resident aliens.

The complaint asserts that each year thousands of Mexican nationals maintaining permanent residences in Mexico are allowed to use green cards to enter the United States by the Immigration and Naturalization Service to work in California farms and vineyards for several weeks or months without requiring immigrant visas. These green carders are not eligible to obtain immigrant visas because the Secretary of Labor has determined that no need for additional farm labor exists. In allowing the green carders to enter the United States without immigrant visas, the suit alleges, the Immigration and Naturalization Service has violated both the Immigration and Naturalization Act and its own regulations which prohibit foreign nationals from using green cards to enter the U.S. unless they are returning to an "unrelinquished permanent residence" in the United States.

The complaint also alleges that the Immigration and Naturalization Service had violated its regulations which prohibit green carders from entering the United States for the purpose of "seeking employment at a place where a labor dispute exists." Since 1965, the United Farm Workers Organizing Committee has been engaged in a labor dispute with the growers of table grapes in California who yearly employ the entering Mexican nationals.

The plaintiffs seek a determination by the District Court that Attorney General Mitchell has failed to enforce federal statutes and regulations which would prohibit Mexican nationals with permanent residences in Mexico from coming temporarily to the United States to engage in farm labor.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL NO.

Complaint for Declaratory Judgment, for Permanent Injunction, and Relief in Nature of Mandamus

ROBERT BUSTOS and LUPE MURQUIA, on behalf of themselves and a class of persons similarly situated but too numerous to mention; and UNITED FARM WORKERS ORGANIZING COMMITTEE, an unincorporated association,

PLAINTIFFS,

v.

JOHN MITCHELL, Attorney General of the United States; RAYMOND FARRELL, Commissioner, Immigration and Naturalization Service of the United States; and HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States,

DEFENDANTS.

FIRST CLAIM

JURISDICTION

1. Jurisdiction in this case is invoked pursuant to 5 U.S.C. 702, 703, pertaining to judicial review of the acts of agencies of the United States; 28 U.S.C. 1361, which authorizes the district courts to entertain an action in the nature of mandamus compeling an officer of the United States to perform a duty owing to plaintiffs; 28 U.S.C. 1331, which gives federal courts jurisdiction over cases involving federal questions; and 11 D.C. Code 521, which confers general jurisdiction upon the United States District Court for the District of Columbia. The suit seeks a declaratory judgment under 28 U.S.C. 1331, an injunction and relief in the nature of mandamus. The amount in controversy exceeds $10.000 without interest and costs.

PARTIES

2. Plaintiff Robert Bustos is a citizen of the United States and of the State of California, and at all times herein mentioned has been engaged in farm labor. Plaintiff Lupe Murquia is an alien permanent resident of the United States and of the State of California and at all times herein mentioned has been engaged in farm labor. The wages, hours, and conditions of employment of plaintiffs Bustos, and persons similarly situated are and will be adversely affected by the continuation of unlawful practices and policies herein complained of. Plaintiff United Farm Workers Organizing Committee is an unincorporated association with its principal offices in the State of California. Said United Farm Workers Organizing Committee is organized to represent farm laborers in collective bargaining with respect to their wages, hours, and conditions of employment. Said association is authorized to and does bring this suit in behalf of its members, who are citizens and alien permanent residents of the United States and/or the State of California and elsewhere, whose wages, hours, and conditions of employment are and will be adversely affected by the continuation of the unlawful practices and policies of defendants herein complained of.

3. Plaintiffs Bustos and Murquia bring this action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated, to wit: citizens and alien permanent residents of the United States engaged in farm labor in the State of California. The number of such farm laborers is so large that it is impracticable to bring them all before the Court. There are common questions of law and fact relating to all such farm laborers who seek the same relief for the same legal wrongs herein complained of. Plaintiffs' claims are typical of the claims of said class and plaintiffs will fairly and adequately protect the interests of said class.

4. Defendant John Mitchell is Attorney General of the United States. Defendant Raymond Farrell is the Commissioner of the Immigration and Naturalization Service of the United States. Defendant Harland B. Carter is the Regional Commissioner of the Southwest Region of the Immigration and Naturalization Service of the United States.

5. Defendants, in concert and individually, pursuant to 8 U.S.C. 1103(a) and related statutes and regulations, are responsible for the administration and enforcement of the laws pertaining to the terms and conditions under which Mexican nationals may enter the United States for the purpose of engaging in farm labor.

FACTS

6. Each year thousands of Mexican nationals enter the United States and work as farm laborers in the State of California during the picking season and other periods when farm owners employ supplemental laborers. The Mexican nationals, about whom plaintiffs complain, enter the State of California for several weeks or months to perform such farm labor, but retain their permanent residences in Mexico. They may stay days or weeks at a particular location in the State of California and then move on to another location or locations where farm labor is being employed or they may remain during the entire period in the United States at a particular location. They may leave their families in Mexico or bring them to the United States. Whatever the differences in their working patterns, all the said Mexican nationals have their permanent residences in Mexico; they return to those residences for a significant portion of every year; while they come to the United States yearly, they have no intent to remain permanently in this country.

NATURE OF CLAIM

7. This suit, in the first claim, seeks relief against the admission of Mexican nationals with unrelinquished permanent residences in Mexico who come temporarily to the United States to engage in farm labor by using Alien Registration Receipt Cards issued them by the Immigration and Naturalization Service. The first claim alleges that the Immigration and Nationality Act and the regulations issued pursuant to it require such Mexican nationals to obtain valid immigration visas to enter the United States. Such Mexican nationals are not eligible to obtain immigration visas because the Secretary of Labor has determined that the supply of domestic farm labor is sufficient and that admission of farm laborers would adversely affect wages and working conditions.

8. The Mexican nationals, about whom plaintiffs complain, originally came to the United States under immigrant visas as immigrant aliens. Under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), all aliens are classified as immigrants except aliens coming within the ten specific classes enumerated in that section who are classified as non-immigrants. Subsection 101(a)(15)(H) provides that an alien "who is coming temporarily to the United States to perform other temporary services or labor" and who has "a residence in a foreign country which he has no intention of abandoning" is a non-immigrant alien. When said Mexican nationals entered the United States, they claimed that they had the intention of becoming permanent residents of the United States. The Immigration and Naturalization Service, therefore, determined that they did not come within Section 101(a)(15)(H) or any of the other enumerated classes of non-immigrant aliens in Section 101(a)(15) and deemed that they were immigrant aliens.

9. Immigrant aliens, unless they are returning resident immigrants, may not enter the United States without a valid immigrant visa. Such visas permit immigrant aliens to enter or reenter the United States only for a period of four months. Sections 211 and 221(c) of the Immigration and Nationality Act, 8 U.S.C. 1181, 1201(c). Under Section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), any persons born in the Western Hemisphere may receive an immigrant visa only if the Secretary of Labor makes a favorable determination under Section 212(a)(14). Section 212(a)(14) allows such persons to receive immigrant visas "to enter the United States, for the purpose of performing skilled or unskilled labor," only if "the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that (a) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (b) employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

10. Since on or about 1965, the Secretary of Labor has made no certification under Section 212(a)(14) of the need for additional farm labor. Instead, the Secretary of Labor has determined, pursuant to 29 C.F.R. 60.2, that the supply of

domestic farm labor is sufficient and that admission of farm laborers would adversely affect wages and working conditions. Schedule B, following 29 C.F.R. 60.6. As a result, immigrant aliens have not been eligible to obtain visas to enter the United States in order to work as farm laborers since 1965. The Mexican nationals, about whom plaintiffs complain, first obtained immigrant visas to work as farm laborers prior to 1965.

11. Defendants have issued the Mexican nationals, about whom plaintiffs complain, Alien Registration Receipt Cards, sometimes known as green cards (Form I–151). Defendants have allowed such Mexican nationals to use these cards instead of immigrant visas in order to enter the United States to work as farm laborers and continue to allow them to use these cards to enter for this purpose. Defendants, by this practice, have not required said Mexican nationals to apply for immigrant visas every four months in order to reenter the United States as farm laborers even though the Secretary of Labor has determined that the supply of domestic farm labor is sufficient and that admission of farm laborers would adversely affect wages and working conditions. 29 C.F.R. 60.2, and Schedule B following 29 C.F.R. 60.6. As a result, said Mexican nationals are continuing to utilize the cards indefinitely in order to enter the United States to work as farm laborers.

12. Plaintiffs are informed and believe that defendants claim that they have authority to issue Alien Registration Receipt Cards to the Mexican nationals, about whom plaintiffs complain, under Section 211(b) of the Immigration and Nationality Act, 8 U.S.C. 1181(b). That section allows the Attorney General to admit "returning resident immigrants, defined in Section 101(a)(27)(B)," without an immigrant visa. Section 101(a)(27)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(B)) applies to an "immigrant, lawfully admitted for permanent residence, who is returning from a temporary residence abroad." The regulations, promulgated by the Department of Justice pursuant to Section 211, provide that an immigrant alien may only use an Alien Registration Receipt Card to enter the United States if he is "returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad." 8 C.F.R. 211.1(b)(2).

13. The Mexican nationals, about whom plaintiffs complain, are not "returning resident immigrants" under Section 211(b) of the Immigration and Nationality Act because they are not residents of the United States and are therefore not returning to residences in the United States. Instead, they are leaving their permanent residences in Mexico when they enter the United States. They are not "returning from a temporary residence abroad" under Section 101(a)(27)(B) of the Immigration and Nationality Act because their temporary residence is in the United States and their permanent residence is in Mexico. They are not "returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad" under 8 C.F.R. 211.1(b)(2) because they do not have an unrelinquished permanent residence in this country and they have not been temporarily absent abroad. Defendants have, therefore, illegally issued Alien Registration Receipt Cards to said Mexican nationals in lieu of an immigrant visa and have illegally allowed them to continue to use these cards to continue to enter the United States.

14. Defendants have the power and duty to enforce the aforesaid statutes and regulations, to require the Mexican nationals, about whom plaintiffs complain, to obtain immigrant visas to enter the United States, and to proscribe their entrance into the United States upon the basis of Alien Registration Receipt Cards.

15. Plaintiffs on numerous occasions in the past have made written demands on defendants that they carry out their duty to exclude the Mexican nationals about whom plaintiffs complain. Defendants have failed and refused to do so.

16. At all times herein mentioned, defendants have been able to perform their duties, but notwithstanding such ability and despite the aforementioned demands, defendants have failed and refused, and continue to fail and refuse, to enforce the statutes and regulations specified above designed to protect the wages and working conditions of plaintiffs against foreign labor. They have failed and refused, and continue to fail and refuse, to require the Mexican nationals, about whom plaintiffs complain, to procure valid, unexpired immigrant visas under Section 211(a). Said failure and refusal is unlawful and contrary to said statutes and regulations as heretofore set out.

17. Defendants' acts and omissions have resulted and continue to result in injury to the named plaintiffs and members of the individual plaintiffs' class in the following respects:

(a) They have from time to time been unable to obtain jobs when able, willing, qualified, and available because of competition from the Mexican nationals, about whom plaintiffs complain;

(b) They have received lower wages than they would have without the competition of such Mexican nationals;

(c) They have been forced to work under substandard sanitary, health, safety and other working conditions which are significantly below those of other industries in California;

(d) They have been hindered in their efforts to organize effective collective bargaining units.

Unless defendants are required to give effect to the statutes and regulations herein set out, plaintiffs will continue to suffer severe and irreparable injury to their economic and physical well-being and that of their families and dependents.

18. The statutes and regulations relied upon above in this claim were enacted and promulgated specifically to benefit plaintiffs and to protect them from the harm complained of.

19. Plaintiffs have no plain, speedy and adequate administrative remedy in that no administrative procedure exists, statutory or otherwise, to challenge the failure of the defendants to perform their duty. No action for damages would adequately compensate plaintiffs. Unless defendants are required to give full force and effect to the statutes and regulations, set forth above, plaintiffs will continue to suffer severe and irreparable harm. Only a declaration or order by this Court requiring defendants to perform duties owed the plaintiffs would be sufficient to provide to plaintiffs the benefit of the laws enacted by Congress and of the regulations promulgated pursuant to those laws.

Second Claim

JURISDICTION, PARTIES, AND FACTS

20. Plaintiffs reallege each and every allegation contained in paragraphs 1–6, inclusive, of the first claim and incorporate them herein by reference as if fully set forth.

NATURE OF CLAIM

21. This suit, in the second claim, seeks to have defendants reclassify, as non-immigrant aliens, all Mexican nationals who come temporarily to the United States as farm laborers and have residence in Mexico which they have no intention of abandoning and who are now considered as immigrant aliens. As non-immigrant aliens, such Mexican nationals are not entitled to enter the United States because there are unemployed persons in the United States capable of performing farm labor and because no employer has satisfied other criteria established by the Secretary of Labor.

22. The Mexican nationals, about whom plaintiffs complain, originally came to the United States under immigrant visas as immigrant aliens. Section 101 (a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) provides that an alien "who is coming temporarily to the United States to perform other temporary services or labor" and who has "a residence in a foreign country which he has no intention of abandoning" is a non-immigrant alien. However, when said Mexican nationals entered the United States, they claimed that they had the intention of becoming permanent residents of the United States. They, therefore, did not come within Section 101(a)(15)(H) or any of the other enumerated classes of non-immigrant aliens in Section 101(a)(15) and were deemed immigrant aliens.

23. All the Mexican nationals, about whom plaintiffs complain, are now, and should be classified as, non-immigrant aliens rather than immigrant aliens. Said Mexican nationals seek to return under Section 101(a)(27)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(B)) which applies to an immigrant "lawfully admitted for permanent residence, who is returning from a temporary visit abroad." Section 101(a)(20) of the Act (8 U.S.C. 1101(a)(20)) defines "lawfully admitted for permanent residence" as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." In fact, the status of said Mexican nationals has changed.

Whatever their original intent might have been, they are not now permanent residents of the United States and, when they periodically reenter this country they have no present intent to become permanent residents. Instead, they come temporarily to the United States each year in order to obtain temporary employment and have residences in Mexico which they have no intention of abandoning. Defendants have illegally failed to reclassify said Mexican nations under Section 101(a)(15)(H) as non-immigrants.

24. As non-immigrant aliens, the Mexican nationals, about whom plaintiffs complain, are barred from entry into the United States. They cannot enter the United States pursuant to Alien Registration Receipt Cards because these cards may only be issued to immigrant aliens. 8 C.F.R. 211.1(b). They can not enter the United States pursuant to Alien Registration Cards or on any other basis because Section 101(a)(15)(H) of the Immigration and Nationality Act allows such non-immigrant aliens to enter the United States only. "if unemployed persons capable of performing such services or labor cannot be found in this country." Non-immigrant aliens may only enter the United States pursuant to this section if the prospective employer satisfies criteria established by the Secretary of Labor, including that he has made an effort to recruit farm workers locally, has offered wages, housing and other fringe benefits at specified levels, and has abidide by state and local labor, health, and housing laws. 20 C.F.R. 602.10. Since no employer has satisfied these criteria, no non-immigrant aliens have been admitted into the Southwestern United States pursuant to Section 101(a)(15)(H) since 1967.

25. Defendants have the power and duty to enforce the aforesaid statutes and regulations and to redetermine the status of each alien seeking admission or readmission to the United States. Aliens not authorized to be admitted must be excluded.

26. Plaintiffs on numerous occasions in the past have made written demands on defendants that they carry out their duty to exclude the Mexican nationals about whom plaintiffs complain. Defendants have failed and refused to do so.

27. At all times herein mentioned, defendants have been able to perform their duties, but notwithstanding such ability and despite the aforementioned demands, defendants have failed and refused, and continue to fail and refuse, to enforce the statutes and regulations specified above designed to protect the wages and working conditions of plaintiffs against foreign labor. They have failed and refused, and continue to fail and refuse, to reclassify aliens maintaining a permanent residence in Mexico, returning to the United States for the purpose of temporary farm labor under the authority of an Alien Registration Receipt Card, as non-immigrants under Section 101(a)(15)(H) of the Immigration and Nationality Act. Said failure and refusal is unlawful and contrary to said statutes and regulations as heretofore set out.

28. Defendants' acts and omissions have resulted and continue to result in injury to the named plaintiffs and members of the individual plaintiffs' class as set forth in paragraph 17 of the first claim, which are incorporated herein by reference.

29. The statutes and regulations relied upon above in this claim were enacted and promulgated specifically to benefit plaintiffs and to protect them from the harm complained of.

30. Plaintiffs have no plain, speedy and adequate administrative remedy in that no administrative procedure exists, statutory or otherwise, to challenge the failure of the defendants to perform their duty. No action at law for damages would adequately compensate plaintiffs. Unless defendants are required to give full force and effect to the statutes and regulations, set forth above, plaintiffs will continue to suffer severe and irreparable harm. Only a declaration or order by this Court requiring defendants to perform duties owed the plaintiffs would be sufficient to provide to plaintiffs the benefit of the laws enacted by Congress and of the regulations promulgated pursuant to those laws.

THIRD CLAIM

JURISDICTION, PARTIES AND FACTS

31. Plaintiffs reallege each and every allegation contained in paragraphs 1–6, inclusive, of the first claim and incorporate them herein by reference as if fully set forth.

32. Plaintiff Robert Bustos was employed prior to September 8, 1965, by growers of table grapes in the Counties of Kern and Tulare in the State of California. Plaintiff Lupe Murquia was employed prior to September 8, 1965 by growers of table grapes in the Counties of Kern and Tulare in the State of California. Plaintiff United Farm Workers Organizing Committee represents

farm laborers who have been and/or still are employed by growers of table grapes in the Counties of Tulare and Kern and elsewhere in the State of California. Said United Farm Workers Organizing Committee called a strike against these growers on September 8, 1965, and the strike has continued and still continues to this date. Plaintiffs Robert Bustos and Lupe Murquia at all times herein mentioned have been members of Farm Workers Organizing Committee and have not worked for such growers since September 8, 1965.

33. Plaintiffs Bustos and Murquia bring this action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated, to wit: citizens and alien permanent residents of the United States engaged in farm labor in the State of California who are members of plaintiff United Farm Workers Organizing Committee and who have been participating in a labor dispute with table grape growers in the Counties of Kern and Tulare. The numbers of such farm laborers is large and it is impractical to bring them all before the Court. There are common questions of law and fact relating to all such farm laborers who seek the same relief for the same legal wrongs herein complained of. Plaintiffs' claims are typical of the claims of said class and the plaintiffs will fairly and adequately protect the interests of said class.

34. Plaintiffs reallege each and every allegation in paragraphs 8–13, inclusive, of the first claim and incorporate them herein by reference as it fully set forth.

NATURE OF CLAIM

35. This suit, in the third claim, seeks to prohibit Mexican nationals having an Alien Registration Receipt Card from entering the United States to accept employment at a place where the Secretary of Labor has determined a labor dispute exists.

36. An immigrant alien may not enter the United States pursuant to an Alien Registration Receipt Card (Form I–151) "when the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment" and if the alien, prior to his departure or during his temporary absence abroad, has "entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination." 8 C.F.R. 211.1(b)(1).

37. The Secretary of Labor has determined that a labor dispute exists between plaintiff United Farm Workers Organizing Committee and a number of growers of table grapes in the Counties of Kern and Tulare and elsewhere in the State of California, including those who employed plaintiffs Robert Bustos and Lupe Murquia, other members of the class they represent, and members of plaintiff United Farm Workers Organizing Committee.

38. Despite said determination, large numbers of Mexican nationals, about whom plaintiffs complain, have departed from the United States subsequent to the Secretary's determination and have reentered and continue to reenter the United States under authority of Alien Registration Receipt Cards under arrangements with, and with the intention of working for, said table grape growers. Defendants have failed to enforce 8 C.F.R. 211.1(b)(1) to prevent this.

39. Defendants have the power and duty to enforce 8 C.F.R. 211.1(b)(1). Aliens not authorized to be admitted must be excluded.

40. Plaintiffs on numerous occasions in the past have made written demands on defendants that they carry out their duty to exclude the Mexican nationals about whom plaintiffs complain. Defendants have failed and refused to do so.

41. At all times herein mentioned, defendants have been able to perform their duties, but notwithstanding such ability and despite the aforementioned demands, defendants have failed and refused, and continue to fail and refuse to enforce 8 C.F.R. 211.1(b)(1). They have failed and refused, and continue to fail and refuse, to apply this regulation to the Mexican nationals, who are the subjects of this action. Said failure and refusal is unlawful and contrary to said regulation.

42. Defendants' acts and omissions have resulted and continue to result in injury to the named plaintiffs and members of the individual plaintiffs' class as set forth in paragraph 17 of the first claim, which is incorporated herein by reference. In addition, the effectiveness of the strike of plaintiff United Farm

Workers Organizing Committee has been reduced by the availability of the Mexican nationals, about whom plaintiffs complain, as farm labor.

43. The regulation relied upon above, 8 C.F.R. 211.1(b)(1), was promulgated specifically to benefit plaintiffs and to protect them from the harm complained of.

44. Plaintiffs have no plain, speedy and adequate administrative remedy in that no administrative procedure exists, statutory or otherwise, to challenge the failure of the defendants to perform their duty. No action at law for damages would adequately compensate plaintiffs. Unless defendants are required to give full force and effect to 8 C.F.R. 211.1(b)(1), plaintiffs will continue to suffer severe and irreparable harm. Only a declaration or order by this Court requiring defendants to perform duties owed the plaintiffs would be sufficient to provide to plaintiffs the benefit of the laws enacted by Congress and of the regulations promulgated pursuant to those laws.

Wherefore, plaintiffs pray that this Court:

1. Declare that immigrant aliens who are not returning to an actual, unrelinquished, permanent residence in the United States may not enter or reenter the United States in order to engage in agricultural labor unless they have a valid unexpired immigrant visa issued pursuant to a certification made under 8 U.S.C. 1182 (a) (14) by the Secretary of Labor.

2. Declare that aliens who enter or reenter the United States under the authority of Alien Registration Receipt Cards in order to perform temporary agricultural labor and who have a residence in Mexico which they do not intend to abandon must be reclassified as immigrant aliens under 8 U.S.C. 1101(a)(15)(H) and that these non-immigrant aliens may not enter or reenter the United States unless there are no unemployed persons within the United States capable of performing such agricultural labor and unless the criteria established by the Secretary of Labor in 20 C.F.R. 602.10 are complied with.

3. Declare that no aliens seeking reentry into the United States through presentation of Alien Registration Receipt Cards may be admitted under 8 C.F.R. 211.1(b)(1) if their intention is either to work at any place where the Secretary of Labor has determined that a labor dispute exists, or is to continue employment which commenced after that determination.

4. Order defendants, their agents and employees forthwith to carry out their duty to implement 8 U.S.C. 1101(a)(27), 8 U.S.C. 1181 (a) and (b), 8 U.S.C. 1201(c) and 8 C.F.R. 211.1, by requiring all immigrant aliens who seek to enter or reenter the United States in order to engage in agricultural employment through presentation of Alien Registration Receipt Cards and who are not returning to an actual, unrelinquished, permanent residence in the United States after a temporary visit abroad, to present a valid unexpired immigrant visa issued pursuant to a certification made under 8 U.S.C. 1182(a)(14) by the Secretary of Labor.

5. Order defendants, their agents and employees forthwith to carry out their duty to reclassify all immigrant aliens, who seek to enter or reenter the United States in order to engage temporarily in agricultural employment and who have residences in Mexico that they have no intention of abandoning, as non-immigrant aliens under 8 U.S.C. 1101(a)(15)(H) who may not enter or reenter the United States unless no unemployed persons in the United States are capable of performing such agricultural labor and unless the criteria established by the Secretary of Labor in 20 C.F.R. 602.10 are complied with.

6. Order defendants, their agents and employees forthwith to carry out their duty to implement 8 C.F.R. 211.1(b)(1) requiring that all aliens seeking reentry into the United States through presentation of Alien Registration Receipt Cards be refused admission if their intention either is to work at any place where the Secretary of Labor has determined that a labor dispute exists, or is to continue employment which commenced after said determination.

7. Enjoin defendants, their agents, and employees from continuing to allow immigrant aliens who seek to engage in agricultural employment and who are not returning to an actual, unrelinquished, permanent residence in the United States after a temporary visit abroad from entering or reentering the United States through presentation of Alien Registration Receipt Cards without valid immigrant visas in violation of 8 U.S.C. 1101(a)(27), 8 U.S.C. 1181 (a) and (b), and 8 U.S.C. 1201(c).

8. Enjoin defendants, their agents, and employees from continuing to treat aliens who seek to enter or reenter the United States under authority of Alien Registration Receipt Cards in order to engage temporarily in agricultural employment and who have residences in Mexico which they have no intention of abandoning, as immigrant aliens in violation of 8 U.S.C. 1101(a)(15).

9. Enjoin defendants, their agents, and employees from allowing aliens to reenter the United States through presentation of Alien Registration Receipt Cards if their intention is either to work at any place where the Secretary of Labor has determined that a labor dispute exists or to continue employment which commenced after said determination in violation of 8 C.F.R. 211.1(b)(1).

10. Determine that plaintiffs are entitled to the costs.

11. Provide such other relief to the plaintiffs as the Court may consider just and proper.

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Dated: December 1, 1969.

[From the St. Louis Post-Dispatch, Sept. 22, 1969]

EXPLOITING THE POOR

> Gentlemen, I have spent my entire life in Texas. My work has taken me into the poorest counties, towns, barrios and homes in the Southwest. I have seen, as you may have, the slums of South El Paso, the squalor at the edge of Phoenix, and the hopelessness in towns like Laredo and Calexico. I have stood in the pre-dawn hours at the bridge in Roma, Texas, and seen busloads of strikebreakers from Mexico being transported across the border to defeat the efforts of poor American citizens to improve themselves. These are things we must work to change.

This personal note, quietly eloquent, was injected in the statement in support of HR 12667 made on behalf of the Division for Poverty and the Division for Migration and Refugee Service of the United States Catholic Conference by the Rev. John E. McCarthy before a House Labor subcommittee. It added a particularly persuasive touch to his factual report on how so-called "green card" working permits for commuting aliens are being abused to perpetuate the shocking poverty and unemployment along the Mexican border, a situation which could be corrected by the pending legislation.

Although workers in the industrialized portions of the United States won their fight for unionism more than 30 years ago and have become at least reasonably affluent, the conditions still prevailing in California vineyards and Texas cotton fields are worse than feudal. And efforts to improve them—such as the courageous campaign of Cesar Chavez and the Delano grape-pickers—are seriously hindered by the exploitation of Mexicans as strikebreakers, poor people often unaware that they are being pitted against other poor people.

Influential but socially irresponsible groups have been able to exclude farm workers from the rights accorded to other workers—to their profit and to the shame of the rest of us. But efforts are being stepped up on behalf of those who ask no more than fair play. Elimination of the "green card" abuse is necessary to clear the national conscience.

[From the Congressional Record—Senate, Nov. 26, 1969]

COURT RULES THAT FARMERS HIRING ILLEGAL FOREIGN LABOR LIABLE FOR DAMAGES

Mr. MONDALE. Mr. President, as chairman of the Migratory Labor Subcommittee, I have seen firsthand the depresing effect on living and working conditions caused by the presence of foreign workers in agriculture. While some of these foreign workers are in the United States under some color of law, there have been an increasing number of foreign workers that enter this country illegally. They are called wetbacks, because many gain entry by swimming across the Rio Grande.

In an unprecedented decision a California court has ruled that domestic farmworkers have a right to prevent agricultural employers from hiring wetbacks in order to depress wages and working conditions, since the use of wetbacks to the detriment of local workers would be an unfair business practice. The suit follows the settlement of a previous action when a grower agreed to request that prospective agricultural employees offer proof of lawful status in the United States, such as an alien registration receipt card, commonly known as a green card, or a valid draft card, or a local drivers license.

Legal action undertaken by California Rural Legal Assistance on behalf of farmworkers punctuates the failure of the Government to effectively implement laws enacted by Congress for the protection of domestic labor. The immigration laws provide that alien workers shall not be imported if their use will have an adverse effect on domestic wages and working conditions—8 U.S.C. 1182(a)14. Consistent with controls on foreign labor, Congress prohibited directly or indirectly inducing illegal entry into the United States or harboring or concealing illegal entrants from discovery. However, a loophole exempts the employment of illegal entrants from the statute—8 U.S.C. 1324. This provision which has made it easy for illegal entrants to obtain employment both on the farms and increasingly in the cities, contributes substantially to the presence in the United States of perhaps as many as 400,000 aliens who entered illegally, have no right to be here, but who deprive low-income domestic workers of jobs. In the fiscal year ending June 30, 1969, the Immigration and Naturalization Service reported the apprehension of 151,000 illegal entrants, possibly only one-third of those aliens who escaped detection.

The use of wetbacks coincides with high unemployment and low wages. At the current rate of unemployment perhaps as many as one out of every six unemployed American workers could be out of work because of the use of illegal entrants. On the farms only one worker in eight works more than 250 days of the year, and average hourly earnings—$1.48—are at most one-half those prevailing in the industrial sector—$3.01.

In Sonoma County, Calif., a rich agricultural area where workers are challenging the unemployment of wetbacks, another group of workers covered by Federal and State minimum wage laws has brought suit against an employer charging that they were paid an average of 30 cents per hour on a piece rate to harvest pears and prunes. Applicants for farm labor jobs in the same county were double growers' requests for workers even at periods of peak utilization.

While illegal entrant use was formerly predominantly agricultural, current patterns show a dramatic shift to permanent low and semiskilled employment in industry and in the cities. Additionally the incidence of illegal alien labor has gradually spread from the Southwest to other areas of the country. In Los Angeles where the unemployment rate is about 5 percent compared with 3.5 percent nationally—August 1969—up to 4,000 illegal entrants are apprehended each month. Recent wetback apprehensions in rural areas similarly reflect a shift in wetback employment to more permanent jobs such as wineries and light manufacturing. Wetbacks deprive American low-income workers of possibly $100 million every year.

The easy employment of Mexican nationals at wages ranging from five to 10 times the amount earned in Mexico has led to the development of a lucrative and sophisticated series of smuggling syndicates which extract up to $300 from Mexican workers to get them into the United States and find them work. These syndicates, which are feared by residents on both sides of the border, are not above resorting to bribery and violence and have been linked, by four Franciscan fathers working with Mexican nationals, to the marihuana traffic as well.

Because of the magnitude of the problem and the apparent disinterest in adequately enforcing the law, efforts at controlling the illegal entrant have been diligent but puny. Multiple returnees are permitted to leave voluntarily or are transported to the interior of Mexico at the expense of the U.S. Government. Smugglers are prosecuted but frequently plead guilty to a lesser offense, or receive a minimal sentence.

Law suits such as the Santa Rosa case could have some deterrent effect on the unlimited employment opportunities which wetbacks now have in the United States, in possibly requiring more responsible employers to request that Spanish-speaking males who seek employment provide some evidence that they are entitled to be in the United States. But only the repeal of the employment exemption—8 U.S.C. 1324—can provide law enforcement officials with an effective deterrent to the widespread use of illegal entrant labor.

Furthermore, Mr. President, this case illustrates the excellent service provided by California Rural Legal Assistance, and other legal service programs throughout this Nation, in bringing high quality legal service to the poor in order that their interests are adequately represented and laws designed for their protection are actually enforced.

It is important that poor people have the same administrative and judicial remedies that are available to, and exercised by, all Americans. Unfortunately, the ability of legal services programs to continue to provide these valuable and basic services to the poor is in jeopardy because of the regressive amendment recently adopted by the Senate. This case presents yet another example of why I fought to defeat that amendment. It is ironic that the existence of an OEO program is threatened merely because it is providing services that it is designed to offer, services that nonpoor Americans take for granted.

Mr. President, I ask unanimous consent that two articles, one from the Los Angeles Times, and another from the Washington Post, that report this court case be printed in the RECORD, along with an article from the October 20, 1969, issue of the Nation.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 19, 1969]

CALIFORNIA FARMS WARNED ON HIRING WETBACKS

(By John Berthelsen)

Santa Rosa, Calif.—A Superior Court judge here has ruled that farmers are liable to punishment if they refuse to give jobs to American citizens while hiring illegal Mexican immigrants.

The victory is one step in a long fight by California Rural Legal Assistance Inc., an agency of the Office of Economic Opportunity, to stop the use of illegal migrants by farmers and growers. The ruling will enable other agricultural workers to obtain injunctions against employers using such poorly paid labor.

The decision may also have an effect on the long and bitter grape strike in California's central valleys. Leaders of the strike claim that growers have used illegal aliens as strikebreakers.

The decision was handed down late last week by Superior Court Judge Joseph Murphy. He rejected a move to block a $20,000 damage action against apple grower Donald Orr of Healdsburg, a town north of San Francisco. Orr's attorneys contended that laborers Eleno Riojas and Guadlupe Guitan had no right to bring the action, which accused Orr of employing illegal immigrants. Murphy ruled that the right was provided under the unfair business practices law.

Attorneys for the CRLA representing Riojas and Guitan also sought an injunction ordering farm employers to require prospective workers to show alien registration cards, draft cards or local drivers' licenses as legal proof of residence.

The judge rejected this bid, saying it was inappropriate since the working season was over. He added it was "not a determination on whether it should be ordered"—leaving the door open for similar injunctions during next year's growing season.

"The impact of this decision is going to send tremors throughout California agriculture," said the plaintiff's attorney, Sheldon Greene.

The Border Patrol estimates that as much as $100 million a year is being taken out of the United States by illegal workers. A total of 151,000 border-jumpers were caught between June 1968 and July 1969—63,000 of them in California, and 4,000 in Los Angeles alone.

[From the Los Angeles Times, Oct. 10, 1969]

ILLEGAL ALIEN EMPLOYERS LIABLE FOR PUNITIVE ACTION, COURT RULES—JUDGE SAYS DAMAGES ARE POSSIBLE UNDER CODE WHICH PROHIBITS UNFAIR BUSINESS PRACTICES AND COMPETITION

(By Harry Bernstein)

Growers and other employers who hire aliens illegally are liable for puntive damages under a law prohibiting unfair business competition, a California court has ruled.

Millions of Mexican citizens have illegally crossed the border since World War II, taking jobs that unions and other groups have complained should have gone to unemployed U.S. citizens.

When the illegal aliens are caught they are normally sent back to Mexico, but there is no punishment of either the alien or the U.S. employer.

However, Superior Judge Joseph P. Murphy ruled in Santa Rosa Thursday that punishment is possible under the state's civil code, which forbids unfair business practices and unfair competition.

By hiring an illegal alien the employer may be engaging in unfair business practices, he found, since the action could serve to depress wages or working conditions of U.S. citizens who want the job, too.

Case Filed by Legal Group

The case was filed by the California Rural Legal Assistance, a federally-funded war-on-poverty project.

Sheldon Greene, general counsel for CRLA, said the case is a class action on behalf of all farm workers.

(In a similar case last Aug. 28, Santa Clara County Superior Judge Joseph Kelly ruled that a mushroom-growing firm must refrain from hiring aliens illegally and open its employment records to the CRLA).

The judge said a final decision on whether the Orr Fruit Co. must pay any or all of the $20,100 damages sought by CRLA will be made after a hearing on the specific facts in the case.

But Greene noted that the unprecedented part of the decision is the court's ruling that the state law can be used, in effect, to punish employers who hire illegal aliens in competition with U.S. workers.

Greene said new Department of Immigration figures show that in the past year 151,000 illegal aliens were caught nationally, including 63,000 in California.

But for every one alien apprehended, it is estimated that another two are not caught, Greene added:

"We estimate that these aliens send $100 a million a year back to Mexico. An employer could check on the status of his employes by simply asking to see a drivers' license, draft card or some other identification."

The Orr Fruit Co. denied knowingly using illegal aliens.

Greene said that "obviously the wetbacks don't come over to this country to see their Aunt Emma or visit Palm Springs. They come to get work, and if U.S. employers were stopped from hiring them, then the flood of wetbacks would stop."

(The illegal aliens became known as wetbacks because many of them swam across the Rio Grande to cross into this country.)

[From the Nation, Oct. 20, 1969]

OPERATION SISYPHUS: WETBACKS, GROWERS AND POVERTY

(By Sheldon L. Greene)[1]

San Francisco.—The bracero program died in 1968, after a long illness. Under its provisions, 4.5 million Mexican temporary workers were brought into the United States between 1942 and 1963 as supplementary farm labor. Officially terminated by Congress in 1963—long after the World War II labor shortage which it was intended to ease had ended—it finally trickled to a halt in August 1968 when Secretary of Labor W. Willard Wirtz denied a request by California tomato growers for 2,200 Mexican farm workers. He characterized this refusal of legal entry as "a historic step towards healing the migrant workers sore in California and in the entire United States." But current 1968–69 immigration records show the apprehension of 150,000 Mexican nationals who had entered the United States illegally, and the incidence of these wetbacks in American employment is perhaps triple the number caught. This would suggest that Secretary Wirtz's cure is at the most cosmetic.

Illegal entry by Mexican nationals has afflicted domestic low-income workers since world War II. In 1942, after Mexico had agreed to supply temporary workers under the bracero program, Texas farmers refused to meet agreed wages and working conditions. In response, Mexico for a time cut off the supply of workers, but U.S. Immigration authorities permitted thousands of Mexicans to cross the border illegally. They were then apprehended and "paroled" to Texas farmers, thus avoiding the terms of the international labor agreement. Farmers and border industries got cheap labor; domestic farm workers and El Paso garment workers and meat packers suffered wartime inflation but were forced to accept low wages if they wanted to work at all.

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[1] Mr. Greene is general counsel for California Rural Legal Assistance and a specialist in litigation challenging the employment of nonresident alien labor.

In 1954 the President's Commission on Migratory Labor studied the border labor problem and concluded: "The United States, having engaged in a program giving preference in contracting to those who had broken the law, has encouraged a violation of the immigration laws. Our government has thus become a contributor to the growth of an illegal traffic which it has responsibility to prevent."

That same year, the Justice Department launched Operation Wetback, a roundup of more than a million illegal entrants in an area stretching as far as St. Louis and Chicago. San Antonio alone harbored 331,000. The roundup seemed so successful that the Immigration and Naturalization Service stated optimistically in its 1955 report that it had ended the wetback problem. The boast proved premature.

The Border Patrol and the Investigation Section of the INS are diligent, outnumbered and outmaneuvered. The comparatively few illegal entrants who attempt to cross the natural, and for the most part barren, frontier on foot are easily spotted by the continual overhead observation of Border Patrol spotter planes; they are then picked up by ground patrols which run along exfoliated drag strips. Some few aliens risk their lives in airless car trunks and campers, or precariously flattened on a ledge beneath passenger cars. Such trips cost from $100 to $300. One recently ended in death by asphyxiation.

But for 70 to 80 per cent of the illegal entrants access is neither hazardous nor romantic. More than a million Mexican aliens carry visitors' permits. These salmon-colored cards, issued by the Mexican Government at a cost of about $80, authorize visits of seventy-two hours in an area not more than 25 miles from the border.

But the aliens, most of them, are not looking forward to a visit. The typical wetback meets an agent in Mexico who provides him with a routing or a contact. Once across the border, he is transported to a city, often Los Angeles, and there referred to a job. In some instances, the agents provide transportation by selling a group of wetbacks an automobile, in which they can better elude detection. Those who lack the cash are offered a "go now, pay later" plan under which the price of the car is deducted from the future wages.

Once inside, the alien easily merges into urban or rural Chicago barrios. Anyone can get a Social Security card by filing an application; proof of legitimate entry or birth certificate is not required. Employers record the Social Security number and couldn't care less about the worker's status. It is a felony to induce an alien to enter the United States, to transport him or to harbor him from detection; but conservative legislators from farm districts have managed to exempt the employer of an illegal entrant from that chain of complicity, even when the employee is known to be a wetback.

Agriculture absorbs the bulk of the illegal entrants. During fiscal 1968, 38,950 of those apprehended were doing farm work. Wetbacks are preferred by most farmers because they are thought to work harder than Americans and to complain less about conditions. The minimum wage for farm work in California is $1.65 an hour; wetbacks in labor camps are lucky to earn $1.35, not enough to live on in California but four times the Mexican minimum wage. The rich regions of California are dotted with the grim labor camps which formerly housed braceros. Wetbacks now live in many of them, hidden well off public roads on land posted against trespassing.

While most wetbacks seek farm work during the busy seasons, substantial numbers are kept on the year around, or find off-season jobs during the very periods when domestic farm workers, residents of the area, are unemployed and dependent on public assistance. Winter unemployment in farm regions runs as high as 16 per cent of the domestic labor force; in California alone idle farm workers require $15 million in public assistance. Ten thousand wetbacks were caught in the five states that make up the Southwest in February 1969. From this figure one can assume that from 10,000 to 40,000 low-income families were displaced from jobs by wetbacks during the winter months, at a cost in taxes and loss of domestic wages amounting to tens of millions.

Surveys show that the prevalence of wetbacks also depress wage levels, and encourages employers to ignore the laws governing wages and working conditions. Union leaders find it difficult to organize in areas saturated with wetbacks. A nationally reported example is the stubborn resistance Cesar Chavez's United Farm Workers Organizing Committee has encountred in its efforts to sign contracts with the California table grape growers. Strikes are not a compelling argument with employers who can rely on Mexican nationals, and the union has been forced to organize a nation-wide consumer boycott of table grapes to achieve its purpose.

Displacement of local workers by wetbacks is no longer a predominantly rural problem, since illegal entrants increasingly gravitate to more permanent jobs in the cities. From 1,500 to 3,000 of them are caught each month in the Los Angeles metropolitan area. Recently, the Border Patrol uncovered a smuggling operation which specialized in supplying wetbacks for industrial jobs in Chicago.

Despite the seemingly impressive figures on apprehensions, the wetback problem is not being brought under control. The program is hampered from the start by a shortage of manpower and equipment. As one patrolman in the Stockton, Calif., area put it: "We stake out Route 99 and the smugglers hear of it and take another road. There aren't enough of us to cover all the main highways all the time." On any given day, approximately 300 officers are on duty in the five Southwestern states.

A more basic problem than the size of the Border Patrol is the ease of entry afforded by the visitor's card and the absence of administrative controls on its use. The zone of travel permitted by these cards (with no record kept of entry and departure) was recently reduced from 150 to 25 miles from the border and that is making it easier to tag violators en route to the big cities. Since the reduction, systematic road checks on approaches to Los Angeles have turned up hundreds of aliens with no residency documents.

However, Border Patrol officials complain privately of the Justice Department's failure to require fingerprints as part of the permit procedure. Lacking that identification, it is almost impossible to spot previous violators when they reappear at the border, and wetbacks who have been returned to Mexico reenter again and again, visitor's permit in hand. Also, since no record is kept as to when a seventy-two-hour visit begins, a Mexican who has eluded detection for weeks or months can depart unquestioned.

The very volume of violators has dictated an informal handling of those caught, and this also fails to discourage the increasing traffic. Illegal entry is a crime for which the violator may be prosecuted in the federal courts and formally deported by the INS. Reentry after such a deportation is a felony. But resort to these remedies is infrequent. The present policy is to allow the illegal entrant to leave voluntarily within three days of apprehension. Often he is permitted to get to the border on his own. Or he may be taken to a detention center in El Paso, Tex., or El Centro, Calif., to await bus transportation to the interior of Mexico at U.S. Government expense. Not only does the wetback get a free trip home but back wages are collected for him by Border Patrolmen. Voluntary return is likened by an INS administrator to a "game warden who discovers a hunter without a license and helps him carry the deer he's killed out of the park." Multiple returnees are seldom prosecuted and are formally deported only after the fourth, fifth or sixth entry, unless they are caught assisting other wetbacks to cross the border. A formal deportation procedure takes no more than fifteen minutes, and does not require the services of an attorney, but the INS claims that there are insufficient hearing officers to handle all the possible cases and that in any case deportation wouldn't stop the alien from trying again. Authorities do not even officially notify a grower when illegal entrants are found on his land.

United States attorneys and judges regard illegal entry as an economic crime of low priority and most Americans sympathize with the wetback, who is after all a very poor man trying to get ahead. Few jurists or juries appreciate the relationship between illegal entry and the plight of the domestic poor. Federal prosecutors have little time even for wetback smugglers, accepting only aggravated cases of prosecution. Despite the high apprehension rate in Northern California—8,500 in August 1968—there has been almost no prosecution of smugglers or transporters. Officials suggest that strict enforcement, involving due process for each alien, would choke court dockets, overburden U.S. attorneys and tie up patrolmen as witnesses. The more pessimistic add that extensive prosecution would ultimately fill the prisons to capacity—a line of reasoning not applied to marijuana cases. INS investigators are hampered by the taciturnity of wetbacks, who refuse to say how they entered the country or who helped them to do so. Aware that failure to cooperate will not land him in jail, the alien has no inducement to reveal what he knows of the smuggling operation.

Recent lawsuits brought in California by domestic farm workers against growers using wetbacks allege that such employment is an unfair business practice calculated to lower their wages, diminish their employment opportunity and force them to seek public assistance at the taxpayers' expense. While employment of illegal entrants is exempt from the legal sanctions against harboring wetbacks, farm workers charge that growers are nevertheless criminally implicated, since offering wetbacks employment and shelter from detection is aiding and abetting in the crime of illegal entry. This resort to self-help law enforcement by the poor is a reflection on the failure of the Justice Department to perform its duties.

The ambivalance of the INS in the area of illegal entry is striking. The search for violators is persistent but ineffectual, and it seems clear that more could be done. The service operates on a budget of $86,450,000, more than half of which is committed to the four states bordering Mexico. Detention and transportation of apprehended illegal entrants alone costs $1.6 million, yet no funds can be found to hire more hearing officers and increase the number of formal deportations. Nor is there money to increase the Border Patrol and investigation staff, despite increased illegal entry and the much heavier work load demonstrated by the higher apprehension rates.

An obvious need is the fingerprint identification of seventy-two-hour permit holders. INS officials argue that it would be impractical to match the fingerprints of apprehended wetbacks against those of 1 million cardholders. Yet the need to check at most 500 fingerprints a day, the ostensible average number of wetbacks caught in the peak months, is small campared to the FBI's work load of 32,000 identifications a day from a file of 15 million sets of prints.

The replacement of cards at four-month intervals would make it easier to revoke the cards of violators. A requirement that holders of the unlimited entry permit post a bond to secure observance of the terms of entry, a device authorized in related immigration laws, could be an effective deterrent. Other steps could be taken to provide more effective enforcement. A recent act which authorizes a federal magistrate to handle petty crimes could undoubtedly speed the prosecution of numerous smuggliing offenses as misdemeanors. Formal deportation following the second illegal entry within two years, the power to assess administrative fines in lieu of prosecution (thereby attaching a portion of the wages earned), and even the right to confiscate the vehicle used in the transportation of illegal aliens, as is done in narcotics smuggling, would also discourage the border hoppers.

Important remedial legislation is before House and Senate. A bill to prohibit the intentional employment of a person illegally in the United States was introduced on March 26, 1969 by Sen. Edward Kennedy and Rep. Michael Feighan. The measure is cosponsored by nine Senators and twenty-three Representatives. But even if passed, it will not result in many prosecutions, since the present difficulties of proving smuggling will be compounded when the federal attorney must submit his case to a jury. However, the abrogation of the employment exemption, combined with occasional well-publicized prosecutions and stiff fines, should cure many employers of hiring wetbacks at bargain rates. Similarly, a bill introduced by Senator Mondale would amend the National Labor Relations Act to make it an unfair labor practice to employ aliens unlawfully present in the country, or to hire nonresident commuter aliens during a labor dispute. Any of these measures, applied for several years, would provide increasingly effective deterrence to illegal entry.

Even so, the problem of the wetback will remain as long as the Mexican-American border is open, the border economies remain interdependent, and American earnings are five to ten times the Mexican wage. But in our increasingly technological society, with the chronic unemployment among low-income unskilled and semi-skilled workers, it is a problem which cannot be ignored. The continued use of nonresident Mexican labor in border areas, a concession to the artificiality of the border, should be coupled with affirmative enforcement of wage standards and labor laws to provide domestic workers with earnings commensurate with living costs, at least equal access to jobs, and the freedom to bargain collectively.

Moreover, urban and rural areas distant from the border have no interdependence with the Mexican population and economy. Lack of enforcement in such places, except for the futile apprehension-return cycle, is really a subsidy to certain industries and subvert the Administration's policy to "move people off the welfare roles and onto the payrolls."

Despite the good record of the Border Patrol, administrative deficiencies in coping with the inflow of illegal entrants cannot be explained entirely by a lack of imagination or a lack of funds. It is not pure fantasy to conclude that the policy of the Justice Department on illegal entry is to do just enough to avoid wholesale criticism, without arousing the serious anger of anti-union employers who favor an abundance of cheap labor.

PERTINENT LEGISLATION

S. 2568—INTRODUCTION OF A BILL ALLEVIATING THE BORDER COMMUTER LABOR PROBLEM

Mr. MONDALE. Mr. President, I introduce, for appropriate reference, a bill to amend the National Labor Relations Act, as amended, so as to make it an unfair labor practice for an employer to employ any alien unlawfully present in the United States, or to employ aliens whose principal dwelling places are in a foreign country during a labor dispute.

Mr. President, as chairman of the Senate Subcommittee on Migratory Labor, I am acutely aware of the adverse social and economic impact caused by commuters who cross the U.S.-Mexican border to work in Texas, New Mexico, Arizona, and California. Recent hearings by the Migratory Labor Subcommittee revealed the severity of this problem.

The commuters I refer to are workers, predominantly from Mexico, that gain entry into the United States for a day, or a week, or a month or more, by displaying either a form I–151—permanent alien registration card—commonly referred to as a green card—or a certificate showing a U.S. birthplace, or a temporary 3-day visa—white card—or a baptismal certificate. Large numbers of illegal entrants also come across the border to work in the United States.

The ready availability of workers along the border areas has contributed to the depression of living and working conditions in the United States and Mexico, and has created a situation resembling our 1930's depression economy. Illustrative of the commuter's adverse impact on our economy are the following data: 90 percent of commuters are in eight border areas from Texas, Arizona, and California; unemployment in Texas border cities is almost 95 percent greater than in Texas interior cities; alien commuters work most often in the lowest skilled, most menial and lowest paid jobs; wages for seasonal farmwork in Texas border areas are over 30 percent less than in the rest of the State; firms that employ commuters tend to pay lower wages than firms that employ only U.S. residents and tend to pay lower wages than are paid U.S. residents for the same work; wage rates paid to commuters are often less than what unemployed U.S. residents say they are able to accept: California farm wage rates are lowest in the border areas where the bulk of the farm labor force is composed of commuters; commuters constitute about 85 percent of the farmwork force in California Imperial Valley, where unemployment in 1966 was 10 percent of the labor force, twice the average rate for the entire State. Furthermore, an adverse impact on the Mexican economy is created by the introduction of U.S. dollars.

Another major adverse effect is that community and union organization efforts are rendered difficult and often ineffective due to the ready availability of workers at such low wages and poor living conditions. By permitting commuters to work indiscriminately in our economy and then take their wages back to the low-cost, low-wage Mexican economy, living and wage standards of U.S. citizens are undermined, decent job opportunities are damaged, and there is an impact throughout our entire Nation. The economic depression no doubt causes U.S. citizens to migrate north, and to our cities, in a desperate search for work. Commuters too often have little or no stake in the resolution of domestic labor disputes or in a sustained effort to improve living conditions. They simply return to the Mexican economy with their earnings. It is widely recognized that commuters are used as strikebreakers during labor organizing efforts to obtain collective bargaining agreements in California and Texas. It has been reliably estimated that 40 percent of the workers at 24 struck grape ranches in the California area in 1968 where Mexican national green-card holders.

This situation has a particular impact on the migrant and seasonal farmworkers who is powerless to affect his own unemployment and underemployment, powerless to fight job displacement, and powerless in union or community organization efforts to improve his living and working conditions.

A proposal that is designed to alleviate some aspects of the commuter problem is contained in a bill which I am introducing today. The proposal would add a new section 8(a)(6) to the National Labor Relations Act making it an unfair labor practice for an employer to hire any alien unlawfully present in the United States, or for an employer to hire during a labor dispute as replacements for a regular employee, any person lawfully admitted to the United States whose permanent residence is in a country contiguous to the United States. It is further proposed that the present section 10(l) of the NLRA be amended to provide mandatory and speedy injunctions for violations of the proposed new section

8(a)(6). The proposal contemplates coverage of the agriculture industry even if legislative proposals—such as S. 8—to remove the exclusion of agriculture employees are not enacted.

Other proposals relating to the border commuter labor problem are already under consideration. Today Congressman Frank Thompson, of New Jersey, is introducing a bill similar to the bill I now am introducing, and hearings are scheduled on his bill for next week. Senator Edward Kennedy has introduced another bill (S. 1694), which I am cosponsoring, that would amend our Immigration and Naturalization laws by refining the commuter labor system. I understand that the Judiciary Subcommittee, which has legislative jurisdiction, and on which Senator Kennedy serves, will soon be holding hearings on that bill. There are companion bills to the Kennedy bill on the House side. I do hope that hearings, in addition to the investigative hearings already conducted by the Migratory Labor Subcommittee, can be held soon on my proposal today.

The investigative hearings held by the Migratory Labor Subcommittee on May 28 and 29, 1969, confirmed the fact that the border commuter labor problem is quite complicated and difficult to define. It is not subject to easy solution. One matter is certain, however, and it is that the best way to cure the problems of poverty, low wages and deplorable living conditions along our Southwestern border communities is to remove the barriers that stand in front of human beings who are trying to gain their fair share of the American dream that has been denied them for so long. A major hurdle to strong, effective, self-help union and community organization is the continuation of the commuter system as we know it today. My bill will hopefully eliminate at least one aspect of the problem by making it an unfair Labor practice under the NLRA for employers to hire illegal entrants and commuter strikebreakers. I am open to further suggestions to alleviating the problem from my colleagues and interested parties.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the Record.

The presiding officer: The bill will be received and appropriately referred; and, without objection, the bill will be printed in the Record.

The bill (S. 2568) to amend the National Labor Relations Act, as amended, so as to make it an unfair labor practice for an employer to employ any alien unlawfully present in the United States, or to employ aliens whose principal dwelling places are in a foreign country during a labor dispute, introduced by Mr. Mondale, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the Record, as follows:

S. 2568

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(a) and section 10(1) of the National Labor Relations Act, as amended, are amended as follows:

Section 1. Add a new paragraph to section 8(a) to read as follows:

"(6) to employ any alien unlawully present in the United States; or hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States; Provided that this section 8(a)(6) shall apply to any employer, whether or not he employs 'employees' as defined in section 2(3)."

Sec. 2. Amend the first sentence of section 10(1) of the National Labor Relations Act by adding the words "or section 8(a)(6)," after "or section 8(b)(7),".

[S. 2568 and H.R. 12667, 91st Cong., first sess.]

A BILL To amend the National Labor Relations Act, as amended, so as to make it an unfair labor practice for an employer to employ any alien unlawfully present in the United States, or to employ aliens whose principal dwelling places are in a foreign country during a labor dispute

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(a) and section 10(1) of the National Labor Relations Act, as amended, are amended as follows:

Add a new paragraph to section 8(a) to read as follows:

"(6) to employ any alien unlawfully present in the United States; or to hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal actual dwelling place is in a foreign country contiguous to the United States: *Provided, That this section* 8(a)(6) shall apply to any employer, whether or not he employs 'employees' as defined in section 2(3)."

SEC. 2. Amend the first sentence of section 10(1) of the National Labor Relations Act by adding the words "or section 8(a)(6)," after "or section 8(b)(7),".

EMPLOYMENT OF ALIENS AS STRIKEBREAKERS

PURPOSE OF H.R. 12667

H.R. 12667 would amend section 8(a) of the National Labor Relations Act, as amended, to make it an unfair labor practice for an employer to employ any alien unlawfully present in the United States or to hire aliens lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States as replacements during a labor dispute for persons ordinarily employed by such employer.

It is aimed at the problem of "border commuters" or "green carders" who come into the United States each day from Mexico to work in border communities, causing adverse social and economic effects on wage and working standards of American industry.

ANALYSIS OF H.R. 12667

Section 8(a) of the act sets forth various types of activities on the part of employers that are designated as "unfair labor practices." H.R. 12667 would add an additional paragraph (6) to section 8(a) to make it an unfair labor practice under the act for an employer to hire aliens under two sets of circumstances—(1) any alien unlawfully present in the United States; or (2) any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States if such alien is being hired during a labor dispute as a replacement for a person or persons ordinarily employed by such employer.

The bill further provides that this new section 8(a)(6) shall apply to any employer, whether or not he employs "employees" as defined in section 2(3) of the act. The effect of this proviso in section 1 of H.R. 12667 would be to eliminate from the definition of employee the restriction against including an individual employed as an agricultural laborer as well as other categories of persons excluded under section 2(3), such as domestic service workers, independent contractors, persons employed by parents or spouses, supervisory employees, or those individuals subject to the Railway Labor Act.

Finally the provisions of section 2 of H.R. 12667 would amend section 10(1) of the act relating to injunctive relief to prevent unfair labor practices under the act by adding the new section 8(a)(6) to the categories of unfair labor practices for which the remedies contained in section 10(1) apply.

CHANGES MADE IN EXISTING LAW BY H.R. 12667

(New matter is printed in italic, and existing law in which no change is proposed is shown in roman.)

Section 8(a)—New Language After 8(a)(5)

"8(a)(6) to employ any alien unlawfully present in the United States; or to hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States: Provided, That this section 8(a)(6) shall apply to any employer, whether or not he employs 'employees' as defined in section 2(3)."

Amendment to Section 10(l) Made in Section 2 of H.R. 12667

"(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b) or section 8(e) or section 8(b)(7) *or section 8(a)(6)*, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred * * *."

[From the Congressional Record—Senate, Mar. 26, 1969]

S. 1694—INTRODUCTION OF A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT—ALIEN COMMUTER (GREEN CARD) SYSTEM

Mr. KENNEDY. Mr. President, on behalf of myself and Senators HARRIS, HART, MONDALE, MUSKIE, NELSON, PELL, TYDINGS, WILLIAMS of New Jersey, and YARBOROUGH, I introduce, for appropriate reference, a bill to amend the Immigration and Nationality Act.

A companion bill is being introduced in the other body by the chairman of its Judiciary Subcommittee on Immigration, Representative MICHAEL A. FEIGHAN, of Ohio.

Mr. President, unemployment rates exceeding 10 percent are common in many border communities from Texas to California. Earnings in border areas are lower than average earnings in the border States as a whole.

This is a deplorable situation, an indication of severe economic depression. There are many reasons for these conditions. There is, for example, no strong economic base along the border. The area is largely rural—agriculture is the major industry. Until recently, farmworkers were excluded from social legislation designed to protect most other workers in our economy.

And even now, despite such changes as the extension of the Fair Labor Standards Act to agriculture, farmworkers still receive far from equal treatment. Wages are low—and partly because new machinery and new patterns of production have been introduced in agriculture, a labor surplus situation exists. As a result, industries attracted to border communities are usually in the low-wage category. The kinds of jobs available in the border areas are not the better jobs found elsewhere in the American economy.

Moreover, border residents are often of Mexican descent—or recent immigrants from Mexico. They have suffered, and continue to suffer economic and social discrimination—a vicious and evil discrimination because of their national origin; and a more subtle discrimination, but no less evil—arising out of the fact that Mexican-Americans are so often poverty stricken, poorly educated, unable to speak English, and seldom able to compete for jobs and opportunities in a society dominated by Anglos.

But there is another reason for the poor working and living conditions along the border—a reason which this Nation largely ignores, but which it cannot deny. In a very important way, these living conditions are imposed upon our residents, by the presence of a readily available and low-paid alien work force from Mexico which undermines the standards American workers generally enjoy throughout the rest of the country.

This alien work force is a major factor contributing to the grinding poverty, high unemployment, and low wages in the border areas. The facts are in the record of hearings and in the last report of the Labor and Public Welfare Subcommittee on Migratory Labor. They are in the record of hearings conducted in California during the last Congress by Representative JOHN V. TUNNEY. They are in the record of hearings I conducted several months ago as acting chairman of the Judiciary Subcommittee on Immigration. They are in the final report of the Select Commission on Western Hemisphere Immigration, established by the Immigration Act of 1965, and in the record of hearings conducted by the Commission last year in San Diego, El Paso, and Brownsville. They are in a recent staff report issued by the U.S. Commission on Civil Rights, and in additional surveys made by the Department of Labor, various unions, and other public and private agencies.

Mr. President, rather than give a lengthy recital of these facts, I ask unanimous consent that the staff report of the Civil Rights Commission, as well as a report prepared by Mr. Stanley M. Knebel of the Department of Labor, and excerpts from a statement I made in this chamber during the last Congress, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1, 2, and 3.)

Mr. KENNEDY. Mr. President, the alien work force from Mexico comes into the country through various channels. There is first of all the movement of workers under the so-called alien commuter system administered by the Immigration and Naturalization Service. This system, a creature of administrative ingenuity without a statutory base, permits Canadian and Mexican workers who have been lawfully admitted to the United States for permanent residence, and who hold alien registration receipt cards—commonly known as "green cards"—

to reside in Canada or Mexico and regularly commute across the border to places of employment in the United States.

For reasons difficult to understand, until little more than a year ago—and only at the request of myself and others—no effect was made to routinely identify commuters in the operating reports of the Immigration and Naturalization Service. A census of the commuter movement was taken, however, during November and December 1967.

This census identified some 40,176 commuters, including 16,713 farm workers, employed mainly in California.

Mr. President, I ask unanimous consent that a breakthrough of the commuter census be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4).

Mr. KENNEDY. Mr. President, the census figure undoubtedly represents a substantial segment of the commuter traffic, especially on a daily or weekly basis. But it does not include an undetermined number of individuals who remain in this country for many weeks or months, usually employed in areas far north of the border.

For this reason, former Secretary of Labor W. Willard Wirtz has estimated the number of commuters at some 100,000. The United Farm Workers Organizing Committee puts it closer to 150,000.

But whatever their numbers, there is no doubt that the commuter movement adversely affects the wages and working conditions of our own residents in the border cities and towns of Arizona, California, New Mexico, and Texas. Something must be done in the interest of these workers and the well-being of their families.

A second source of low-wage labor is found among Mexican nationals who enter the United States as bona fide visitors, usually on 72-hour passes—commonly known as "white cards." Statistics compiled by the Immigration and Naturalization Service are not adequate to gage the full extent of employment among these visitors. Nevertheless, it is estimated that some 1,250,000 white cards are currently in use, and that more than 200,000 new cards are issued annually.

Because the cards are undated and no record of entry is made at the border, Mexican nationals find them an extremely convenient vehicle to enter the United States—and with impunity acquire employment, remaining for extended periods of time in violation of thir limited status as 3-day visitors. Moreover, there are no effective statutory or administrative regulations to deter employers from knowingly hiring the alien visitors. In fact, as it now stands, the Immigration and Naturalization Act expressly facilitates their employment.

Section 274 of the act, which prohibits the harboring and concealing of aliens, contains this proviso:

> For the purposes of this section, employment, including the usual and normal practices incident to employment, shall not be deemed to constitute harboring.

During fiscal year 1968, Immigration and Naturalization Service officers located nearly 26,000 deportable aliens, nearly all for illegal employment, among white card holders in the United States.

I share the view of many, however, that this figure is probably an unfair representation of the number of white carders actually employed. But, again, regardless of their number, the 26,000 figure clearly underscores a problem in the illegal use of white cards by Mexican nationals. And the number of those apprehended is rising annually. The Immigration and Naturalization Service recognizes this disgraceful situation. But I fail to understand why stronger remedial action is not being taken. The long-term progress of our border communities, and the immediate well-being of American workers and their families, demands it.

Finally, the reservoir of low-paid Mexican labor is substantially augmented by an undetermined number of illegal entrants—the so-called "wetbacks." There is agreement in nearly all quarters that this has once again become a serious problem. An indication is seen in the growing number of illegal entrants located by the Immigration and Naturalization Service. In fiscal year 1963, the number stood at 20,797. In the last fiscal year it reached 117,184. And tens of thousands have been added to this figure since last July 1.

In this connection, the smuggling of alien workers from Mexico has become a lucrative business. Aliens are paying up to $200 to be smuggled into the country, and brought to jobs as far north as Chicago. In the last calendar year, in the southwest region alone, some 7,833 aliens were located who allegedly were smuggled or assisted in entering illegally, or were subsequently transported within the United States in furtherance of an illegal entry. The border patrol reports that 714 principals were apprehended as violating the criminal statutes relating to the smuggling of aliens.

This traffic in human cargo which has resulted in the cruel death of several must end. A greater effort is needed to enforce the law—not only in stopping the smuggling of aliens, but also in deterring the entry of any illegal worker, whatever his means for crossing the border.

The influx of an alien work force from Mexico, to compete for the limited number of jobs available in border areas, is compounding an already serious situation, and, understandably, producing bitter resentment among the severely disadvantaged American workers.

In these days of increased agitation by those who find they have no redress of grievances, the alien worker issue could well become explosive, with grave local and international consequences. I believe the situation demands the very urgent and active concern of the administration and the Congress. It demands an orderly pursuit of justice and fair play. Some measure of relief is needed promptly. The bill we introduce today is a modest attempt to begin this effort.

Section 1 of the bill pertains to the commuter system. A major thrust of our immigration laws has always been to protect the working conditions and job opportunities of American workers. As it currently operates, the 40-year-old commuter system, not provided for in these laws, but directly related to them, does not carry out this objective. It is true that potential commuters among many of the current applicants for an immigrant visa are covered by the Labor Clearance Provisions of the Immigration Act of 1965.

But once an applicant is given permanent resident status as a bona fide immigrant—once he receives his green card—for all practical purposes he holds in his hand a permanent work permit for employment in the United States. I do not believe aliens should be given the unique privilege of being considered bona fide immigrants for purposes of employment in this country when they choose to reside across the border and fail to become immigrants in the sense contemplated by law and, more importantly, when their employment is so clearly detrimental to the economic conditions, the job opportunities, and the organizing and collective bargaining efforts of American workers.

The proposed amendment to section 212 of the Immigration and Nationality Act does not end the commuter system, but it does refine its current operations. The amendment simply says that each commuter alien must be regularly certified every 6 months by the Department of Labor, that his presence in the United States to seek or continue employment does not adversely affect the wages and working conditions of American workers similarly employed. The amendment provides for the revocation of a commuter alien's labor clearance, if he violates administrative regulations, such as a ban on strikebreaking—and this regulation needs strengthening—prescribed by the Department of Labor and the Immigration and Naturalization Service to carry out the purpose of this amendment.

Section 2 of the bill removes the provision in section 274(a)(4) of the Immigration and Nationality Act, which exempts from criminal sanctions individuals who willfully and knowingly employ aliens who are in the country illegally. The proviso was placed in the basic immigration statute many years ago, to protect the use of the so-called "wetbacks" by American employers. The time is long overdue to strike it from the statute books.

I believe that the enactment of this bill, if coupled with a strengthening and a more effective implementation of administrative regulations, will contribute a great deal to a reasonable and humane remedy of the chronic problems posed by the influx of workers from Mexico.

I fully appreciate that the commuter system, and the flow of nationals from neighboring countries into the United States, evolved from a recognition of the special relations which we have had with these countries over the years. And I believe the parties concerned can continue to enjoy the mutual benefits of these relations, while at the same time curbing the adverse effects of commuter aliens, including the exploitation of the aliens themselves. In fact, a solution to these festering problems can only help to insure that the spirit of cordiality at the border will continue without difficulty in the years ahead.

I am hopeful that Congress will act on this bill promptly.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1694) entitled "Immigration Act Amendments of 1969," introduced by Mr. KENNEDY (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

EXHIBIT 3

EXCERPTS FROM STATEMENT ON SENATE FLOOR BY SENATOR EDWARD M. KENNEDY, DECEMBER 14, 1967

There is no doubt that the commuter movement adversely effects the wages and working conditions of our own citizens and residents, especially those living in the cities and towns along the Mexican border—in Arizona, California, New Mexico and Texas. The commuter movement from Mexico is a factor contributing to the grinding poverty, high unemployment, and low wages in the border areas.

Border areas consistently have higher rates of unemployment than do interior areas. In many cases, the rates are very much greater.

The rates available in 13 border areas for the first 6 months of this year are typical of annual figures available since 1957. Last June, for example, in none of these 13 areas was the unemployment rate lower than the average rate for the State. Twelve of these border areas were in Texas—the unemployment rate in seven of the Texas areas was more than double the statewide rate of 3.7 percent. In one area, Crystal City in Zavala County, the rate was much greater—11.3 percent.

In 1966, in only one of 19 border areas for which data were available, was the unemployment rate lower than the average rate for the State.

Over the last 10 years, available data permitted 138 comparisons of annual average unemployment rates in border areas with those at the State level. In 129 cases, border area rates were higher than the State average.

It is a deplorable situation—an indication of severe economic depression—that unemployment rates exceeding 10 percent are common in such Texas communities as Laredo, Eagle Pass, Zapata, Brackettville, Cotulla, Crystal City and in El Centro, Calif.

The influx of commuters from Mexico is contributing to the high unemployment rates in border areas.

These commuters are a significant part of the work force in many communities. In some areas their number nearly equals the number of unemployed American workers. In El Paso, where unemployment is currently some 35 percent greater than the State average, the estimated number of commuters in 1966 was more than double the number of unemployed. In El Centro, Calif., where the unemployment rate is currently 13.1 percent, the estimated number of commuters in 1966 was nearly double the number of unemployed. There is every reason to believe the situation has not changed for the better. If anything, it has been aggravated by the frequent use of commuters as strikebreakers.

Mr. President, I ask unanimous consent to include in the RECORD at the conclusion of my remarks statistical summaries of unemployment rates in border areas over the last 10 years, and an additional table on unemployment and alien commuters in 1966 for selected border areas.

The PRESIDING OFFICER· Without objection, it is so ordered.

(See exhibits 3, 4, and 5.)

Mr. KENNEDY of Massachusetts. Mr. President, aside from the commuter influx contributing to high unemployment in border areas, it also contributes to depressed wage rates. Industry by industry, county by county, the pattern is the same—earnings in border areas are lower than average earnings in the State. This is true in more than 90 percent of those cases where available information has made a comparison possible.

Although the most definitive date available is based on nonfarm weekly wage rates in 1965, the Department of Labor informs me that the situation remains unchanged. The average weekly nonfarm wage in Imperial County, Calif., is $20 less than the average in the State as a whole—in Santa Cruz County, Ariz., it is $29 less—in nine of the Texas border counties it is at least $25 less, and often more.

The differential is even greater in wage rates for farmwork—especially in the lower Rio Grande Valley of Texas. A year ago, hourly wages in the valley averaged approximately 75 cents—some 22 cents less than the 97 cents average at the State level. As a result of the new farm labor coverage of the Fair Labor Standards Act, there has been a sharp increase in farm wage rates in the valley, and the gap between farm wages in this area and the State as a whole is beginning to narrow. Currently it is some 16 cents—the diffential between 89 cents in the valley and $1.05 at the State level.

But this is belated progress—because for at least 10 years, not only have farm wages in the valley been low, they have also failed to show the gains recorded elsewhere in the State. In 1956 the hourly wage in the valley was 84 percent of the State average—it had dropped to 77 percent by 1966.

Today, largely as a result of the new farm labor coverage of the Fair Labor Standards Act, the ratio has climbed to some 85 percent.

Mr. President, I ask unanimous consent to include in the Record at the conclusion of my remarks a statistical summary of average weekly earnings of nonfarm workers in border areas during the first quarter of 1965, and a second table listing average hourly wage rates for seasonal farmworkers in Texas border areas.

The Presiding Officer. Without objection, it is so ordered.

(See exhibits 6 nd 7.)

Mr. Kennedy of Massachusetts. Mr. President, to illustrate further the contribution of commuters to depressed wage rates in border areas, I will refer to the results of a special survey conducted in 1961, by the Department of Labor in Laredo and El Paso. The survey concerned the jobs held by commuters, the wages received, and the availability of domestic workers for these jobs. Again, the situation has changed little from the time the survey was made, in fact, there is reason to believe it has worsened.

The survey indicates that, although commuters were employed in most occupations and industries, they were heavily concentrated in the garment industry, hotels, restaurants, and retail trade and service establishments.

In the Laredo survey, the Department of Labor contacted a sampling of firms employing some 3,000 workers—of whom 438 were easily identified as commuters.

The survey team reported that additional workers were suspected of being commuters, but could not be readily identified.

The Laredo survey revealed at least two things. First, that a large number of unemployed American workers had the same occupational skills as alien commuters—this in a community where unemployment was heavy—11.3 percent. For example, the two garment firms in the sampling employed 88 commuters as sewing machine operators. Files of the Texas Employment Commission contained applications from 156 unemployed American workers with this same occupation.

Second, the survey shows that firms employing alien commuters paid lower wages than did firms employing American workers. This was not the exception—but a very common pattern, for 19 occupations where sufficient data were available. Moreover, there were cases where a single firm employing both commuters and Americans would pay the commuters less than the Americans similarly employed.

And finally, the average wage paid by those firms employing only American workers was 38 percent higher than the average wage paid by those firms employing commuters as well.

The El Paso survey produced similar results.

I should add here some recent information compiled by the Department of Labor which greatly adds to the seriousness of the wage problem.

The common pattern of low wages in the border areas has led to a high incidence of minimum wage law violations. The Department reports that in fiscal year 1967, 20 percent of the violations in the four border States occurred in counties contiguous to the Mexican border. Yet, these counties had only 6 percent of the nonfarm work force in these four States.

Mr. President, I ask unanimous consent to include in the Record at the conclusion of my remarks a table listing occupational wage data obtained in the Laredo survey and a brief summary of the survey in El Paso.

The Presiding Officer. Without objection, it is so ordered.

(See exhibits 8 and 9).

EXHIBIT 3

UNEMPLOYMENT RATES IN BORDER AREAS, JANUARY–JUNE 1967

State and labor market area	Counties	1967					
		June	May	April	March	February	January
California		5.4	4.9	5.3	5.7	6.0	5.5
San Diego	San Diego	5.3	4.6	4.9	5.1	5.2	5.0
El Centro	Imperial	(2)	(1)	13.1	(1)	(1)	(1)
Texas		3.7	2.7	2.6	2.7	3.0	3.0
Border areas:							
El Paso	El Paso	5.0	3.8	3.7	3.8	4.0	3.9
Brownsville-Harlingen-San Benito.	Cameron	7.3	6.2	6.3	6.0	5.8	5.9
Laredo	Webb	10.6	7.4	9.0	9.0	9.9	11.4
McAllen	Hidalgo and Starr	6.8	5.6	5.6	6.3	6.2	6.3
Del Rio	Val Varda	5.6	(1)	6.1	(1)	8.8	(1)
Eagle Pass	Maverick	9.3	(1)	7.9	(1)	12.8	(1)
Zapata	Zapata	9.8	(1)	11.7	(1)	14.4	(1)
Areas close to the border:							
Brackettville	Kinney	8.8	(1)	8.5	(1)	8.5	(1)
Carrizo Springs	Dimmit	(1)	(1)	7.0	(1)	(1)	(1)
Cotulla	La Salle	7.8	(1)	4.4	(1)	12.4	(1)
Crystal City	Zavala	11.3	(1)	10.7	(1)	14.3	(1)
Hebronville	Jim Hogg	7.3	(1)	6.0	(1)	7.6	(1)
Raymondville	Willacy	7.7	(1)	4.3	(1)	5.2	(1)

[1] Information not available.

Source: Bureau of Employment Security, U.S. Department of Labor.

EXHIBIT 4

BORDER AREA UNEMPLOYMENT RATES ANNUAL AVERAGES, 1957–66

State and labor market area	Counties	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957
California		5.0	5.9	6.0	6.0	5.8	6.9	5.8	4.8	6.4	4.2
San Diego	San Diego	5.2	7.2	7.5	7.7	7.9	7.5	6.4	3.9	4.8	3.1
El Centro	Imperial	9.6	10.1	9.6	9.2	9.0	8.6	(1)	(1)	(1)	(1)
Texas		3.2	4.2	4.8	5.4	5.3	6.0	5.3	4.6	5.3	4.0
Border areas:											
El Paso	El Paso	4.4	5.8	6.0	6.2	5.5	5.6	4.9	3.4	3.9	4.0
Brownsville-Harlingen-San Benito.	Cameron	6.4	7.6	8.5	9.1	9.7	(1)	(1)	(1)	(1)	(1)
Laredo	Webb	9.6	11.3	11.9	12.0	10.1	9.1	9.4	9.2	8.6	9.3
McAllen	Hidalgo and Starr	6.1	7.0	8.0	8.6	9.0	(1)	(1)	(1)	(1)	(1)
Del Rio	Val Verda	6.2	7.7	9.2	9.1	9.4	10.0	8.0	8.5	6.0	9.2
Eagle Pass	Maverick	11.2	14.4	14.7	15.1	13.8	12.4	9.5	11.4	10.4	14.4
Zapata	Zapata	11.0	12.8	12.6	14.3	13.1	12.4	13.1	12.2	6.7	6.9
Areas close to the border:											
Brackettville	Kinney	7.7	8.6	11.7	10.5	12.2	11.2	9.9	8.6	10.4	9.8
Carizzo Springs	Dimmit	10.6	7.1	7.0	6.7	(1)	(1)	(1)	(1)	(1)	(1)
Cotulla	La Salle	10.0	12.2	12.3	13.2	11.8	8.4	7.4	8.2	11.7	9.7
Crystal City	Zavala	12.5	12.3	13.3	12.9	13.6	6.7	7.4	7.7	8.6	4.5
Nebronville	Jim Hogg	9.5	11.5	11.8	10.1	10.6	10.9	9.2	9.8	10.6	10.2
Raymondville	Willacy	9.1	9.1	9.5	10.2	10.0	(1)	(1)	(1)	(1)	(1)
Arizona		3.8	5.1	5.1	5.0	5.1	5.8	4.7	4.7	5.7	3.9
Tucson	Pima	4.1	6.2	6.5	5.8	4.9	5.7	5.1	4.8	6.0	4.1
Douglas and Bisbee	Cochise	3.1	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Nogales	Santa Cruz	5.0	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Yuma	Yuma	5.1	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)

[1] Information not available.

Source: Bureau of Employment Security, U.S. Department of Labor.

EXHIBIT 5

BORDER CITIES—UNEMPLOYMENT AND ALIEN COMMUTERS, JANUARY 1966

City	Unemployed U.S. residents		Alien commuters
	Number	Rate	
Brownsville-Harlingen-San Benito, Tex	3, 020	6. 2	2, 032
El Paso, Tex	5, 050	4. 8	11, 772
Laredo, Tex	3, 365	12. 6	2, 581
McAllen-Pharr-Edinburg, Tex	4, 190	6. 9	1, 163
El Centro, Calif	3, 675	10. 7	7, 616
San Diego, Calif	22, 300	5. 2	9, 281

Source: Unemployment data from the Texas Labor Market, Texas Employment Commission, and labor market reports of the California Department of Employment; alien commuter data from I. & H.S. survey, Jan. 17, 1966.

EXHIBIT 6

THE BORDER COUNTIES—AVERAGE WEEKLY EARNINGS OF NONFARM WORKERS, JANUARY-MARCH 1965

Area	Total nonfarm	Selected industries							
		Mining	Contract construction	Manufacturing	Transportation, communication, and public utilities	Wholesale trade	Retail trade	Finance insurance, and real estate	Services
Border States	$103	$117	$121	$125	$117	$121	$74	$101	$82
Border counties	91	132	116	122	106	98	68	94	66
California	113	147	142	132	128	131	83	106	92
Border counties	107	151	140	147	122	120	79	102	74
San Diego	107	152	140	147	122	122	79	102	75
Imperial	93	122	134	124	107	107	77	85	71
Arizona	94	139	124	117	115	108	68	97	67
Border counties	87	145	114	112	106	86	67	94	66
Yuma	74	101	102	84	110	57	74	90	61
Pima	88	145	117	116	108	104	67	96	67
Santa Cruz	65	(1)	70	53	85	82	61	87	45
Cochise	101	(1)	(1)	117	104	82	60	86	67
New Mexico	89	125	97	106	104	105	62	89	84
Border counties	78	85	92	138	82	97	60	78	61
Hidalgo	69	(1)	(1)	(1)	93	88	57	73	47
Luna	73	(1)	109	78	87	86	57	82	43
Dona Ana	80	85	86	165	79	100	61	78	64
Texas	87	126	91	108	98	107	60	91	61
Border counties	67	101	79	73	90	82	53	80	49
El Paso	76	94	85	78	113	103	60	85	54
Hudspeth	68	70	89	----------	(1)	----------	48	(1)	15
Jeff Davis	76	(1)	(1)	----------	(1)	68	31	(1)	38
Presidio	53	(1)	54	(1)	60	50	50	87	35
Brewster	52	(1)	78	(1)	67	74	44	75	37
Terrell	67	(1)	26	(1)	111	(1)	53	54	36
Val-Verde	57	(1)	87	(1)	79	67	49	74	42
Kinney	58	--------	38	----------	(1)	(1)	32	(1)	37
Maverick	48	104	70	(1)	64	92	39	70	34
Webb	53	79	67	60	62	66	48	67	39
Zapata	54	86	(1)	----------	64	(1)	23	64	31
Starr	68	102	(1)	----------	68	43	38	68	35
Hidalgo	59	107	68	62	81	62	40	72	46
Cameron	58	111	71	65	58	70	49	78	48

[1] Data not published to avoid disclosing information from individual establishments.

Source: Based on data published in 1965 County Business Patterns, U.S. Department of Commerce. Average weekly earnings computed by dividing quarterly payroll by March employment by 13. Result rounded to nearest dollar.

EXHIBIT 7

TEXAS BORDER AREAS—AVERAGE HOURLY WAGE RATE FOR SEASONAL FARM ACTIVITIES, MID-NOVEMBER 1956–65

Area	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957	1956
State of Texas	$0.97	$0.87	$0.78	$0.76	$0.73	$0.56	$0.55	$0.56	$0.52	$0.58	$0.51
Lower Rio Grande Valley	.75	.65	.60	.58	.59	.43	.43	.43	.43	.43	.43
Rio Grande Plains	.77	.73	.68	.68	.67	.49	.46	.46	(1)	.50	.47
Trans-Pecos	.83	.82	.71	.71	.71	.50	.50	.50	.50	.50	.50

[1] Information not available.

Source: Office of Farm Labor Service, Bureau of Employment Security, U.S. Department of Labor. Based upon reports prepared by the Texas Employment Commission.

EXHIBIT 8

OCCUPATIONAL WAGE STRUCTURE—LAREDO, TEX., JUNE 1961 [1]

Industry and occupation	Average wage rate (per week): Firms employing only domestic workers	Average wage rate (per week): Firms employing domestic and alien commuter workers
Hotels and motels:		
Cook	$58	$34
Maid	20	17
Hallboy	25	20
Waiter	[2] 15	[2] 18
Busboy	[2] 25	13
Bartender	58	46
Bellboy	[2] 15	[2] 16
Drugstores and related firms:		
Cashier	27	12
Stock clerk	52	40
Fountain girl	16	[3] 23
Drug clerk	77	55
Grocery and related firms:		
Cashier	24	24
Stockboy	35	20
Produceman	45	35
Butcher	65	52
Warehouseman	37	31
Miscellaneous retail firms:		
Porter	53	35
Warehouseman	73	21
Stockman	53	45

[1] Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported; these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed for the few occupations where data were reported for each workers.

[2] Plus tips.

[3] Plus $3 meal allowance.

EXHIBIT 9

Following is a summary of the El Paso survey results:

Eleven construction firms. Six firms employed only U.S. residents; five employed alien commuters. Two-thirds of the firms employing only U.S. residents paid the union scale. Only 20 percent of the firms employing commuters paid the union scale. The lowest rates were paid by the non-union firms that employed commuters.

Four retail dry goods stores. Three firms employed alien commuters. They paid lower wage rates than the firms that employed only U.S. residents.

Four wholesale and warehouse firms. Three firms employed alien commuters. The firm employing only U.S. residents paid the highest wage rates.

All sample firms in the following industries employed alien commuters: garment manufacturing (11 firms); restaurants (five firms); meatpacking (three firms): and laundries (four firms). Of interest is the fact that in the one laundry where wage rate data were supplied for both alien commuters and U.S. residents, the commuters were paid less than $.50 per hour while the U.S. residents were paid about $.80 per hour.

Insufficient wage and employment data were obtained to make any comparison for seven *transportation and storage* firms; two *cotton processors;* and three *hotels and motels.*

In several industries, *refineries* (four firms); *miscellaneous manufacturing* (seven firms); and *miscellaneous* firms (five establishments), there was no difference in the rates paid by firms employing alien commuters and those employing U.S. workers. One refinery, two miscellaneous manufacturing, and two of the other miscellaneous firms employed commuters.

Six other *retail trade* firms were included in the sample, but meaningful comparison could not be made because the nature of their operations and the occupations of the workers they employed were too dissimilar.

EXHIBIT 4

COMMUTER WORKERS IDENTIFIED BY OCCUPATIONAL CLASS, NOV. 1, 1967, THROUGH DEC. 31, 1967

Port	Industrial workers	Building trades and construction workers	Agricultural workers	Sales and service workers	Private household workers	Total
California:						
San Ysidro	2,005	409	2,827	1,950	344	7,535
Tecate	6	4	30	14	2	56
Calexico	195	93	6,810	517	75	7,690
Andrade	1	0	2	0	0	3
Arizona:						
San Luis	39	14	3.325	146	29	3.553
Lukeville	0	0	0	0	0	0
Sasabe	0	0	0	3	0	3
Nogales	179	136	6	682	115	1,118
Naco	3	31	10	47	3	94
Douglas	48	28	175	99	30	380
New Mexico: Columbus	2	1	26	1	0	30
Texas:						
El Paso:						
Santa Fe Bridge	1,801	844	1,088	2,725	1,388	7,846
Cordova	1,145	704	136	1,387	119	3,491
Ysleta	132	60	165	46	20	423
Fabens	60	14	195	1	9	279
Fort Hancock	3	1	46	0	3	53
Presidio	1	3	17	2	1	24
Del Rio	144	65	18	70	20	317
Eagle Pass	185	147	751	398	154	1,635
Laredo	106	212	321	1,825	205	2,769
Roma	1	7	54	10	1	73
Hidalgo	70	146	472	199	50	937
Progreso	0	6	41	2	1	50
Brownsville	724	215	198	632	148	1,917
Total	6,850	3,140	[3] 16,713	10,756	2,717	40,176

[1] Includes 7,743 agricultural workers who came to the border from the interior of the United States during the count and commenced working as commuters. It is anticipated these workers will return to the interior of the United States in the spring to work as migrants.

Mr. MONDALE. Mr. President, I join with Senator Kennedy and others in the introduction of a bill to amend the Immigration and Naturalization Act to regulate the green-card commuter problem.

"Green-card commuters" are persons who have been granted permanent alien resident status as bona fide immigrants, but who, nonetheless, reside in Mexico or Canada and regularly enter the United States solely for the purposes of employment.

The problems created by the commuter immigrant are manifest, particularly along the Mexican border. Given the poor working and living conditions along the northern border of Mexico, Mexican aliens, as a group, serve as a readily available, low-wage work force which undermines the standards workers generally enjoy throughout the rest of the United States. As a result, the forces of free enterprise are prevented from operating to develop standards along the border commensurate with normal American standards.

The depressed wage rates that result are satisfactory recompense for the commuter immigrant since he can return to Mexico daily or weekly with his earnings to live in a much lower cost economy. These green-card commuters simply fail to become immigrants in the sense contemplated by the law. And their employment in this country is clearly detrimental to the economic conditions, the job opportunities, and the organizing and collective bargaining efforts of American workers, because they have little or no stake in the resolution of domestic labor disputes. Indeed, it is clear that these nonresident commuters, as well as illegal entrants, are widely used as strike breakers.

The bill seeks to remedy this serious problem. While it may need perfecting amendments, I believe the bill provides a sound basis on which to eliminate current abuses of our immigration laws. A major goal of our immigration laws has always been the reasonable protection of working conditions and job opportunities for American workers, and this bill is consistent with that goal.

The bill's purpose is consistent with my personal conviction that our Nation must promote an open border policy—a policy that permits people and trade to flow across our borders without undue restriction. The bill seeks merely to eliminate widespread abuses of our immigration policies—abuses that run entirely contrary to our Nation's dedication to justice and fair play—and I support it for that reason.

[S. 1694, 91st Cong., first sess.]

A BILL, Immigration Act Amendments of 1969

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1182), is amended by adding at the end thereof a new subsection as follows:

"(j) Any alien lawfully admitted for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States and is returning from a temporary stay in such foreign country to seek or continue employment in the United States shall be admitted into the United States only if the Secretary of Labor has determined and certified to the Attorney General within six months prior to the date of admission that the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed, and if such certification has not been revoked on any ground. The provisions of this subsection shall be applicable to any aliens lawfully admitted for permanent residence, whether or not such aliens were so admitted prior to or on or after the date of enactment of this subsection."

SEC. 2. Section 274(a)(4) of the Immigration and Nationality Act, as amended (8 U.S.C. 1324(a)(4)), is amended by striking out the colon and "*Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring".

[From the Congressional Record, Mar. 4, 1970]

S. 3545—INTRODUCTION OF IMMIGRATION AND NATURALIZATION ACT 1970

Mr. MUSKIE. Mr. President, I introduce, for appropriate reference, a bill to amend the Immigration and Nationality Act, to require an immigrant alien to establish and maintain a permanent, bona fide residence as a condition for entering and remaining in the United States, and for other purposes. I ask unanimous consent that the text of this bill be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MUSKIE. Mr. President, all immigrants to the United States must generally have valid immigrant visas upon any entry or reentry to the United States. Exempted from this general rule are immigrants, who are returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year. Such persons are issued a Form I–151, generally referred to as a "green card" and by regulation of the Attorney General are permitted to use this "green card" in lieu of an immigration visa or reentry permit. The Attorney General has and clearly should continue to have authority to promulgate, such regulations.

This bill is directed at an outgrowth and abuse of the above regulations concerning the "greencarders" who is classified as an alien immigrant but who does not, in fact, maintain a bona fide permanent residence in the United States. This type of "greencarder" continues to reside in a foreign country and commutes daily or frequently to work in the United States. The immigration and Nationality Act normally requires such aliens to obtain an immigrant visa or reentry permit for each entry into this country. However, since these commuters or "greencarders" were primarily aliens working in U.S. border towns and living in contiguous foreign territory, an "amiable fiction" was created whereby employment was equated with permanent residence. Despite the fiction that the commuter is an immigrant, it is clear that what really has been established is a work permit system. This "amiable fiction" in its early years applies only to daily commuters in border towns. More recently, however, it has been extended far beyond border towns to seasonal workers who stay in the United States for longer periods of time. However applied, it is still a fiction, a product of bureaucratic accommodation.

SCOPE OF THE PROBLEM

A count made by the Immigration Service on October 31, 1969, indicates over 49,000 "greencarders" crossed the Mexican border on that day alone. It is important, moreover, to note that in the past few years there has been a large increase in the number of seasonal workers who enter this country to follow the crops for several weeks or months, and then return to their homes in Mexico. The number of seasonal workers has never been definitely established. Estimates run from 100,000 to 400,000. We do know, however, that the numbers are high and that the presence of these workers has an adverse economic and social effect on American labor.

EXTENT OF ECONOMIC AND SOCIAL PROBLEMS

The extent of the economic and social problems resulting from the commuter system has been documented in a report prepared by the U.S. Department of Labor for the Select Commission on Western Hemisphere Immigration. I ask unanimous consent that pages 113–130 of this report be reprinted in the RECORD following my remarks. They are well worth reading. The report correlates the employment of commuter aliens with low wages and chronic unemployment among domestic workers.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. MUSKIE. Characteristic of this data is a study made in Laredo, Tex. At the time of the survey, unemployment was 11.3 percent of the total domestic labor force. Two large garment manufacturing firms were found to employ 88 commuters as sewing machine operators at the very time the Texas Employment Service listed 156 U.S. sewing machine operators as unemployed. A comparison of wages paid by firms employing only U.S. workers was found to be 38 percent higher than the wages paid by firms employing commuters in identical occupations.

Another Labor Department report submitted to former Secretary of Labor Willard Wirtz by a high-level departmental factfinding group which visited Delano, Calif., in May of 1968, spells out additional odious economic, social, and administrative problems stemming from the commuter system. This report found among other things, that commuters were in fact being used as strikebreakers to the detriment of American workers. I ask unanimous consent that the text of this report be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 3.)

Mr. MUSKIE. The 1965 amendments to the Immigration and Nationality Act place a limitation of 120,000 on total annual immigration to the United States from all nations in the Western Hemisphere. Given this limited quota, it seems unfair that a single one of these 120,000 positions be used by any person who does not intent to come to permanently and physically live, work in, and become a part of American society.

The legislation I am introducing today recognizes that the commuter problem will be eliminated only by specific congressional action. In a recent article appearing in the Case Western Reserve Journal of International Law—volume 1, No. 2, spring 1969—Mr. Charles Gordon, General Counsel for the U.S. Immigration and Naturalization Service, states:

"It is unlikely that there will be any significant changes in the administrative approach to the commuter problem. As I have noted, proposals to end or modify the program have been rejected by the administrators on the ground that they have been enforcing the will of Congress. Consequently, it may be expected that unless changes are enacted by Congress the alien commuter program will continue to operate as it has for the past 40 years. Thus, if changes are to be made, they apparently will have to be accomplished by new legislation."

I believe there is much merit to the argument that border communities are integrated economic units. Our border towns need the services of Canadian and Mexican workers. Many businessmen depend upon residents of Canada and Mexico for much of their sales. Conversely, Canadian and Mexican border towns rely heavily on the incomes of commuters. Nonetheless, I believe that when Canadian and Mexican resident working in the United States should not be exploited and that their presence should not depress our own labor standards. The legislation I am introducing reflects these realities. It does not propose to bar alien commuters from working in the United States.

Specifically, my bill:

First. Would redefine the term "lawfully admitted for permanent residence" under the Immigration Nationality Act. I intend by this redefinition and other amendments to make it clear that all immigrants after initial admission must permanently and physically reside in the United States. In short, it is my express intent to abolish the commuter system.

Second. Would establish a nonresident work permit system. By recognizing the interdependence of border communities this new form of border crossing authorization is designed for use by nonresidents aliens who wish permanent employment in U.S. border towns. Accordingly, its use will be limited to authorized work locations not more than 20 miles from the U.S. border. This provision, I believe, will preserve freedom of movement and a healthy interconnection between the economies of our border towns. At the same time we abolish one of the abuses of the commuter system—the impact of the farther-ranging "green card" commuter—which has no relationship to the interconnection of our border economy and which has been disruptive and harmful to nonresident American workers.

Work permits would be issued only after the Secretary of Labor certified that American workers are not available and, if none are available, that the wages and working conditions of Americans similarly employed would not be adversely affected. I have included a provision for periodic review of such certifications. My intention is to give the Secretary of Labor wide discretion in determining under what conditions work permits should be granted or withdrawn. Specifically, I have in mind situations where work-permit holders are used as strike breakers. In such cases the Secretary of Labor would revoke the work permit. In brief, I would grant to the Secretary of Labor authority to promulgate such rules and regulations as he feels are needed to implement these amendments.

Third. The bill would establish a 2-year grace period during which time the present commuter system would be phased out. I recognize that a practice of 40 years standing cannot be abolished overnight without hardship on those who have heretofore attained commuter status. In order to deal fairly and humanely with the many thousands of commuters who have relied on present practice, my bill would provide for a reasonable grace period during which all present commuters must either, first, move to the United States, thus becoming bona fide residents, or second, transfer to a nonresident work permit status. Should neither step be taken within that 2-year grace period, their commuter status would be terminated. No new commuters would be admitted after the effective date of this act. During the 2-year grace period all existing commuters will be subject to the same rules and regulations promulgated by the Secretary of Labor vis-a-vis work permit holders.

Fourth. There is evidence that a large number of commuters under the provisions of this bill would make a bona fide move to the United States. I fully recognize that such moves are difficult and in many cases would presuppose the moving of entire families.

The Immigration and Naturalization Service, for immigration purposes, would extend to an entire family the same priority date as their U.S, "green card" principal. This would move the families of green card holders high up on the immigration waiting list and considerably lengthen the waiting period of immigrants presently on the list who wish to enter the United States from the Western Hemisphere. To reduce or minimize this period of additional waiting, my bill would authorize a total of 12,000 numbers to be added to the Western Hemisphere numerical limit for the use of new permanent residents during the 2-year period following the enactment of this act.

Fifth. This legislation would amend the Immigration and Nationality Act by eliminating the present exemption applicable to employers from the so-called "harboring" provisions of section 274(a) (4). The affect of this proposed amendment would make it a criminal offense for employers willfully or knowingly to induce the entry of any alien not lawfully entitled to enter or reside in the United States. It is my intention that section 274(a) (4), as amended by my proposal, will also apply to employers who knowingly employ, among others, nonresident "work permit" holders who are no longer entitled to stay in the United States, or who are working beyond 20 miles of the border, as well as aliens who are in the United States on a so-called "72-hour" visitors card—Form I–186.

Sixth. This bill would establish a new civil action provision, which may be invoked in a Federal court by any person, or his representative, who has been aggrieved by any other person as a result of violations of these amendments. For example, if any employer, 75 miles from the border, knowingly hired an alien who was in the United States on a "72-hour" visitors card or hired an alien "work permit" holder, any person aggrieved by the hiring of such an alien would by this legislation have the right to seek redress in the nearest Federal court.

Seventh. As mentioned above, there is evidence that many commuters and their families would move to the United States. Recognizing that such a mass movement would have an impact on border town school systems, my bill would authorize on a one-time basis only, $25 million for the school systems affected by provisions of this act, as determined by the Department of Health, Education, and Welfare.

Eighth. In addition, all possible manpower and employment assistance should be given. Specifically, I have in mind that the Secretary of Labor, either directly or through the appropriate State public employment service, should provide manpower training and employment assistance to all commuter families where the need exists. Because it is unlikely that such families will know that training and employment assistance is available, I would urge that the Secretary of Labor, working with information provided by the Immigration and Naturalization Service, seek out such commuters and inform them and their families of training and employment opportunities. To assure that such assistance is provided my bill would authorize an additional $25 million in Manpower Act—MDTA—funds.

By finding commuter families, developing their abilities through training, and matching them with jobs, we can significantly ease the impact of the move to the United States.

Mr. President, I urge early and favorable consideration of this bill. I am fully aware how complex are the human, economic, and legal problems to which this bill would apply. I can assure you, however, that much thought and expert consultation has been devoted to devising a bill that would bring a greater measure of social justice to the inhabitants of the Southwest, and especially those along both sides of the Mexican-American border.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill and other material will be printed in the RECORD, as requested by the Senator from Maine.

The bill (S. 3545) to require an immigrant alien to maintain a permanent residence as a condition for entering and remaining in the United States, and for other purposes, introduced by Mr. MUSKIE (for himself and other Senators), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 3545

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration and Nationality Act Amendments of 1970".

IMMIGRANTS

SEC. 2. (a) Section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)) is amended to read as follows:

"(20) The term 'lawfully admitted for permanent residence' means the status of an immigrant who—

"(A) has been lawfully accorded the privilege of residing permanently in the United States in accordance with the immigration laws;

"(B) at the time of making an application for an immigrant visa, intends to reside permanently in the United States; and

"(C) following his admission into the United States as a permanent resident, thereafter permanently and physically resides in the United States; such status not having changed."

(b) Section 212(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (31) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraph:

"(32) Any alien who seeks to procure, has sought to procure, or has procured an immigrant visa without any intent to reside permanently in the United States."

(c) Section 221(a)(1) of such Act is amended by inserting after "section 222" the following: "(including the statement and oath required by subsection (a)(2) of such section)".

(d) Section 222(a) of such Act is amended—

(a) by inserting after the subsection designation "(a)" the following: "(1)";

(a) by striking out the following: "whether or not he intends to remain in the United States permanently;"; and

(b) by inserting at the end thereof the following new paragraph:

"(2) Each immigrant shall sign a separate statement, under oath, at the end of such application that he intends to reside permanently in the United States. The statement of such intent shall be considered a material fact of the application."

(e) Section 241(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (18) and inserting in lieu thereof a semicolon and "or"; and

(2) by adding at the end thereof the following new paragraph:

"(19) was admitted as an immigrant and failed to maintain the immigrant status in which he was admitted or to which it was adjusted pursuant to section 245, or to comply with the conditions of such status."

(f) The introductory matter proceeding paragraph (1) of section 244(a) of such Act is amended by inserting after "suspension of deportation" the following: "(which application shall include a statement signed by the alien, under oath, that he intends to reside permanently in the United States)".

(g) Section 245(a)(1) of such Act is amended by inserting after "such adjustment" the following: "(which application shall include a statement signed by the alien, under oath, that he intends to reside permanently in the United States)".

Sec. 3. Section 274 of the Immigration and Nationality Act is amended—

(1) by striking out of subsection (a)(4) the colon and the following: "*Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring"; and

(2) by adding at the end thereof the following new subsection:

"(c)(1) A person, or his representative, who is aggrieved by another person who commits an act in violation of clause (1), (2), (3), or (4) of subsection (a) of this section, may commence a civil action, without regard to the amount in controversy, in the judicial district in which the defendant resides, has his principal place of business, or in which the defendant may be found.

"(2) If the court finds that the defendant has committed any act in violation of any such clause, it shall order the defendant to cease such violation immediately, and grant such other relief as the court considers appropriate. Failure to obey an order may be punished by the court as contempt of the court."

NONRESIDENT WORK PERMITS

Sec. 4. (a) Section 101(a)(15)(H) of the Immigration and Nationality Act is amended by adding at the end thereof the following: "or (iv) who is going to commute regularly to the United States to perform skilled or unskilled services or labor at a point not more than twenty miles away from a border between the United States and the foreign country of residence of such alien;"

(b) Section 214(e) of such Act is amended—

(1) by inserting after the designation "section 101(a)(15)(H)" the following: "(i), (ii), or (iii)"; and

(2) by inserting after the first sentence the following new sentence: "The question of importing an alien as a nonimmigrant under section 101(a)(15)(H)(iv) in any specific case or specific cases shall be determined by the Attorney General, upon petition of the person who intends to employ such alien, and only after the Secretary of Labor has certified to the Attorney General that (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time and at the place to which the alien is destined to perform such skilled or unskilled services or labor, and (2) the employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

(c)(1) Chapter 7 of title II of such Act is amended by adding at the end thereof the following new section:

“TERMINATION OF EMPLOYMENT STATUS

“Sec. 365A. The status of an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(iv) shall terminate when the employment with the employer petitioning for the admission of such alien ends. The employer filing the petition for such alien, shall, within five days after the alien ceases working for such employer, notify the Attorney General in writing that the employment has terminated and the date of such termination. The employer shall also furnish such additional information as the Attorney General may require.”

(2) The table of contents of such Act is amended by inserting between items 265 and 266 the following new item:

“Sec. 265A. Termination of employment status.”

(d) Section 266 of such Act is amended by adding at the end thereof the following new subsection:

“(e) Any employer who fails to give the written notice to the Attorney General, as required by section 265A, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both.”

(e)(1) Chapter 9 of title II of such Act is amended by adding at the end thereof the following new section:

“REVIEW OF NONIMMIGRANT LABOR CERTIFICATIONS

“Sec. 293. Not less than once every six months, the Secretary of Labor shall review the certification he has made under the second sentence of section 214(c) on behalf of an alien admitted as a nonimmigrant under section 101(a)(15)(H)(iv). If upon review the requirements of such sentence are no longer met, the Secretary of Labor shall revoke such certification and shall so notify the Attorney General immediately, and the alien shall be subject to deportation. The Secretary of Labor shall have authority to promulgate rules and regulations necessary to carry out his duties under such sentence and this section.”

(2) The table of contents of such Act is amended by inserting after item 292 the following new item:

“Sec. 293. Review of nonimmigrant labor certifications.”

(f) An alien lawfully admitted for permanent residence prior to the date of enactment of this Act (as such term was defined in section 101(a)(20) of the Immigration and Nationality Act prior to such date) may be reclassified, if otherwise eligible, as a nonimmigrant alien under section 101(a)(15)(H) of such Act, as amended by this section.

WESTERN HEMISPHERE NUMERICAL LIMITATIONS

Sec. 5. During the two-year period following the date of enactment of this Act, beginning on the first day of the first month following such date, a total of 12,000 aliens may be classified as special immigrants, as defined by section 101(a)(27)(A) of the Immigration and Nationality Act, which total shall be exclusive of special immigrants who are immediate relatives of United States citizens as described by section 201(b) of such Act and shall be in addition to the total authorized by section 21(e) of the Act of October 3, 1965.

ASSISTANCE TO SCHOOL DISTRICTS

Sec. 6. In order to minimize the impact upon school districts resulting from the provisions of this Act, there is authorized to be appropriated to the Commissioner of Education an amount not to exceed $25,000,000, to be administered by the Commissioner for operating expenses of school districts determined by the Commissioner to have an increased enrollment as a result of the provisions of this Act. The Commissioner shall distribute the funds authorized by this section, in such manner and under such conditions as he may determine, on an equitable basis after considering the impact of the additional numbers of children enrolled in the schools of each local educational agency as a result of this Act and the amount appropriated pursuant to this Act. Such amount shall remain available until expended.

MANPOWER TRAINING

Sec. 7. There is authorized to be appropriated to the Secretary of Labor an amount not to exceed $25,000,000, to be expended for manpower development and training programs authorized by the Manpower Development and Training Act of 1962, title I of the Economic Opportunity Act of 1964, or any other manpower development and training program administered by or through the Department of Labor, for aliens lawfully admitted to the United States for permanent residence prior to the date of enactment of this Act, and their families. The Secretary shall distribute the funds authorized by this section, in such manner and under such conditions as he may determine, on an equitable basis after considering the numbers of such aliens and their families locating in any State.

APPLICABILITY

SEC. 8. (a) Except as provided in subsection (b), the amendments made by section 2 of this Act shall apply only to an alien who has not been granted an immigrant visa prior to the date of enactment of this Act.

(b) The amendments made by section 2 of this Act shall apply, commencing 2 years after the date of enactment of this Act, to any immigrant who was granted an immigrant visa prior to the date of enactment of this Act.

EXHIBIT 2—THE "COMMUTER" PROBLEM AND LOW WAGES AND UNEMPLOYMENT IN AMERICAN CITIES ON THE MEXICAN BORDER

(Prepared for the Select Commission on Western Hemisphere Immigration by The Bureau of Employment Security, Office of Farm Labor Service, U.S. Department of Labor, April 1967)

For many years the American Government has permitted alien immigrants to the United States to reside in Mexico and Canada and commute to jobs in the United States without losing their immigrant status. In effect, employment is equated with residence. This practice has been bitterly opposed by residents of U.S. towns on the Mexican border. They feel the Mexican immigrants are not really immigrants to the United States—they only enjoy the material benefits of working for U.S. wages and working conditions while living in Mexico where living standards and costs are much less. With lower living costs than U.S. residents, alien commuters are able, it is argued, to accept less pay than reasonable for U.S. residents to accept. Thus wage rates are undercut and American workers suffer.

It is not just that the commuters settle for lower wages and a lower living standard. They also avoid much of the *costs* of public services in the United States, some of which they enjoy: public highways, medical and police protection services, shopping facilities, and sometimes even schools. This further reduces the real income of U.S. residents.

Opposition to the alien commuter was succinctly expressed in a February 3, 1961, Resolution of the Texas AFL–CIO Executive Board that is typical of feeling on the border.

"The citizens along the U.S.-Mexican border . . . are the victims of the unfair competition for jobs of border crossers who commute daily . . . from the low cost-of-living areas south of the border. These people are willing to work at a wage which is insufficient to provide a decent standard of living for the American citizen living in the United States.

"The 'commuters,' moreover, have at times been used as strikebreakers in an effort to destroy unions of American citizens . . .

"There can be no hope that thousands of American citizens living in the Rio Grande Valley or El Paso or other border cities ever will be able to earn a living wage so long as commuting by border crossers is permitted . . ."

This paper examines readily available data that may shed some light on the extent to which U.S. residents living on the Mexican border are affected by commuters. No effort is made to discuss the legal aspects of the American Government's policy permitting commuting which has also been challenged by U.S. groups opposed to the practice. Perhaps the best discussion of this may be found in the House Judiciary Committee's 1963 publication, "Study of Population and Immigration Problems and Commuters," an unpublished paper prepared by John W. Bowser, Deputy Assistant Commissioner, Inspections, U.S. Immigration and Naturalization Service.

Extent of commuting. Unfortunately commuters are not routinely identified in the operating reports of the Immigration Service. That agency has made several special identification checks of border crossers to try and pinpoint the volume of commuting; the results of these checks are probably the best measure of commuting. The U.S. State Department and the Mexican governmental agency, Programa Nacional Fronterizo have also made estimates of commuting that yielded data roughly comparable to the I&NS survey results.

In part, some of the difficulty with understanding the commuter problem lies in the difference between the popular conception of what is a commuter and the technical, legal definition.

The general public probably would regard anyone living in Mexico and working in the United States as a commuter. Furthermore, all aliens working in the United States would also be regarded as part of the commuter problem, even though they do not commute.

In the legal sense, only *aliens* living in Mexico are commuters. United States citizens living in Mexico are not; aliens living and working in the United States are not. The situation is further compounded by the fact that most of the alien commuters have family or friends living in the United States and may themselves reside occasionally in the United States. Very frequently aliens will give U.S. addresses to their employers and may reside some of the time in the United States and some of the time in Mexico.

One other problem exists. American policy basically is designed to facilitate travel between Mexico and the United States. Many thousands of Mexican citizens are permitted to enter this country for business or pleasure with entry documents that do not permit them to work. Undoubtedly some of these visitors do work, despite the best efforts of U.S. authorities. Such illegal, wetback, workers would be regarded in the popular mind as commuters but would not appear in any official or semiofficial estimate of the volume of alien commuters. Indeed, officials of the Immigration Service would probably deny that there are many illegal commuters. But residents of border communities do not agree.

The wide difference between the popular view of the commuter problem and the legal view has been discussed to emphasize that the official statistics really only describe a limited part of a general problem. In an economic sense the public view is right. The existence of a large number of unskilled jobs serves to depress wage rates; it makes no difference whether the worker is an alien or a United States citizen living in Mexico; whether he is an alien residing in the United States; whether he enters and works legally or illegally. The impact is the same: wage rates are lowered.

The latest I&NS special survey identified about 44,000 alien commuters January 17, 1966. Almost 95 percent worked in eight border areas—El Paso, Laredo, Brownsville and Eagle Pass, Tex.: Nogales and San Luis, Ariz.: and Calexico and San Ysidro, Calif. Illustrating the fact that the alien commuters do not fully describe the economic impact of commuting, another 18,000 United States citizens lived in Mexico and worked in the United States—almost 30 percent of the total commuters. Table 1 lists various estimates of the volume of commuting made by different agencies and at different time periods; table 2 presents a comparison of alien and U.S. citizens commuting at the time of the latest I&NS survey.

TABLE 1.—NUMBER OF MEXICAN ALIEN COMMUTERS

	Jan. 17, 1966 [1]		Jan. 11, 1966 [3]						
	Total	In agriculture	Total	In agriculture	May 17, 1963 [1]	May 8, 1963 [3]	January 1960 [2]	Jan. 24–Feb. 1, 1960 [1]	Mexican estimates [1]
Major points of entry:									
Texas:									
Brownsville	2,032	226	2,552	619	1,796	1,729	135		3,500
Hidalgo	1,163	805	1,000	511	366	532			
Roma	208	187	146	125	89	108			
Laredo	2,581	175	2,239	209	2,490	2,382	3,000		
Eagle Pass	1,604	536	2,195	901	1,586	1,037	1,400		
Del Rio	513	99	489	82	237	314	400		
Fabens	274	219	267	207	307	316			
Ysleta	248	137	266	115				111	
Cordova	2,932	80	3,455	164				2,273	
Sante Fe Street Bridge (El Paso)	8,592	590	7,605	944	13,492	13,332		10,884	15,700
Arizona:									
Douglas	418	96	470	93	307	288			
Naco	127	20	134	19	202	134			
Nogales	1,614	108	1,392	53	1,464	1,854	1,132		
San Luis	4,234	3,583	3,654	3,024	1,239	1,038			
California:									
Calexico	7,616	6,468	8,098	7,324	4,692	5,342	183		
San Ysidro	9,281	3,967	8,460	3,134	5,855	5,374	15,000–20,000		15,000
Minor points of entry	250	161	219	129	87	101			
Grand total	43,687	17,457	42,641	17,653	34,223	33,867			

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[1] Special I. & N.S. surveys on dates indicated.

[2] U.S. State Department estimates based on U.S. consulate reports.

[3] Programa Nacional Fronterizo: Tijuana, B.C.; Ciudad Juarez, Chih.; and Matamoros, Tamps., Mexico, 1962. The Mexican figures probably include commuters who are U.S. citizens residing in Mexico.

TABLE 2.—WORKERS RESIDING IN MEXICO COMMUTING TO JOBS IN THE UNITED STATES, MAJOR ENTRY POINTS, JAN. 1, 1966

			U.S. citizens	
	Total	Mexican aliens	Number	Percent of total
Texas:				
Brownsville	3,503	2,032	1,471	42
Hidalgo	2,561	1,163	1,398	55
Laredo	3,715	2,581	1,134	31
Eagle Pass	2,710	1,604	1,106	41
Del Rio	831	513	318	38
Cordova	4,290	2,932	1,358	32
Santa Fe Bridge	12,913	8,592	4,321	33
Arizona:				
Douglas	587	418	169	29
Nogales	1,882	1,614	268	14
San Luis	4,858	4,234	624	13
California:				
Calexico	9,957	7,616	2,341	24
San Ysidro	12,333	9,281	3,052	25
Total	60,140	42,580	17,560	29
All other areas	1,806	1,107	699	39
Total	61,946	43,687	18,259	29

Source: Special survey of border crossers by Immigration and Naturalization Service.

Evidence of depressed U.S. wage scales.—Comprehensive information about wage rates is not available for most border areas. Most of the border towns are very small and not included in the statistical series that contain wage rate information. The discussion that follows is based primarily upon very scattered and fragmentary information. Notwithstanding their limitations, the data do show clearly that wage rates are low in the border areas.

The presence of the alien commuters, however, is not the sole cause of low wage rates. Many factors determine wage levels—a surplus or shortage of workers; the kinds of jobs involved (higher-skilled jobs demand higher wages); the kinds of industry (usually durable goods manufacturing pays higher wages); the extent to which viable trade unions exist. In general, the factors which produce high wage rates are not found as frequently in border areas as they are in interior areas. But the factors which produce low wages are commonly present in the border towns and quite often are interrelated with the alien commuter problem.

Most of the border areas have relatively large labor surpluses, partly because of the commuters, but also because of large numbers of low-skilled U.S. citizens and resident aliens residing in the United States. Thus, not all of the low wage problem is due to the commuters.

Comparisons of area wage levels in the same state do not always reveal that wages in the border areas are always the lowest in the state. Interior areas in a border state also have large labor surpluses that cause wages in these areas to be as low, or lower, than wages in the border areas. The northeastern corner of Arizona, far removed from the border, where the poverty-stricken Navajo Indians live, is a case in point.

Some border areas have concentrations of heavy industry, or establishments where the wage structure is determined by collective bargaining agreements or other factors not primarily concerned with conditions in the border towns. In such instances, the wages in the border towns may be higher than in interior areas where no such establishments exist. But wages on the border are seldom, if ever, higher than in the interior for the same kind of work at the same kind of firm.

TEXAS

Farm wage data are available from the monthly reports of the Texas Employment Commission. Monthly estimates of average hourly earnings in manufacturing, durable and nondurable goods industries are published by the Texas Employment Commission. Median earnings data are available from the 1960 census of population for one Texas border city, El Paso, and five other major Texas cities: Fort Worth, Beaumont-Port Arthur, Dallas, Houston, and San Antonio. Two special surveys were made in El Paso and Laredo in 1961 by the Department of Labor specifically designed to explore some aspects of the commuter problem. These surveys contain information about wages in the occupations in which most commuters are employed.

A. *Farm wages.*—Farm wage rates in Texas are lowest in border areas. Average hourly farm wages for seasonal farm work in the three agricultural reporting areas on the border were $0.76 in November 1966—31 percent less than the $1.10 average in the remainder of the state. The lowest wage rates are in the Lower Rio Grande Valley, $0.75; slightly higher in the next area, Rio Grande Plains, $0.77; and highest of all the border areas, $0.83 in the Trans Pecos area.

The highest farm wages in Texas are in the areas farthest removed from the border—$1.20 and $1.24 in the Northern Panhandle and the High Rolling Plains. The following map of Texas shows the geographic pattern of average wage rates for seasonal farmwork.

Large numbers of alien and U.S. citizen commuters are employed in agriculture in the border areas. The January 17, 1966, I&NS survey identified 1,584 citizen commuters and 1,282 alien commuters in the Valley; 531 citizen and 810 alien commuters in the Rio Grande Plains; and 973 citizen and 1,078 alien commuters in the Trans Pecos areas. Commuters to agricultural jobs formed a very large proportion of the commuters in the Valley and the Rio Grande Plains areas. In the former area, 51 percent of the U.S. citizen commuters and 37 percent of the alien commuters worked in farm jobs. The corresponding percentage in the Rio Grande Plains were 21 and 17 percent. In the Trans Pecos area, where most of the commuters went to nonfarm jobs in El Paso, only 11 percent of the citizens and 9 percent of the alien commuters worked in agriculture.

Commuters constituted a significant proportion of the seasonal farm work force in the border areas. In the Lower Rio Grande Valley about 15 percent of the seasonal farmworkers were commuters, with alien commuters making up about 7 percent of the seasonal farmworkers. In the Rio Grande Plains, about 9 percent of all seasonal workers were commuters, and 5 percent were alien commuters. In the Trans Pecos area almost all seasonal farmworkers were commuters. However, in this area farm work is a very minor activity—only about 1,500 seasonal workers were employed in January 1966, compared to 19,700 seasonal workers in the Valley and 15,600 in the Rio Grande Plains.

Wage rates were higher in the Trans Pecos area than in the other two border areas because of two factors: the area is isolated without a large resident farm population; the bulk of jobs in the area are found in the El Paso metropolitan area where nonfarm wage levels tend to be higher than levels in rural areas. In contrast, the Valley and Rio Grande Plains areas have no large metropolitan areas. They have a large rural population, largely composed of Mexican-Americans, both citizens and resident aliens. The level of economic activity in the latter areas is much lower than in El Paso. The low-wage levels in the Valley and the Rio Grande Plains areas are probably primarily due to the large surplus of poor, unskilled, poorly educated, rural people (most of whom are Mexican-American) residing in the areas. But augmenting this labor surplus by adding commuters from Mexico, persons who are even poorer, more unskilled, and less educated, serves to depress an already intolerable situation.

B. *1960 census of population median earnings data.*—Median earnings data reveal earnings of El Paso workers are significantly lower than in most other major Texas metropolitan areas. Of the 11 major occupational-sex groupings, median earnings were lowest in El Paso for four groupings (male clerical workers, female clerical, sales, and private household workers); and second lowest for three other groupings (male sales, clerical workers, and operatives and kindred workers). The highest El Paso ranked among the six areas was in the male service worker classification where it ranked third.

One other aspect of the census of population data must be mentioned. Since the data are obtained from a household enumeration, residents of Mexico are not included in the census statistics because their households were not enumerated. Thus, for El Paso, the census statistics overstate the incomes of persons that work in that city because they omit the earnings of commuters who work for the most part in the city's lowest paid jobs.

Table 3 contains pertinent median earnings data obtained in the 1960 census of population.

TABLE 3.—MEDIAN EARNINGS IN 1959 OF PERSONS IN THE EXPERIENCED LABOR FORCE BY SEX AND OCCUPATION

[6 standard metropolitan statistical areas in Texas]

Occupation	El Paso		San Antonio		Dallas		Fort Worth		Houston		Beaumont-Port Arthur	
	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank
Al male workers	$4,199	5	$3,725	6	$4,560	4	$4,657	3	$4,915	2	$5,207	1
Clerical and kindred	4,186	6	4,272	5	4,543	4	4,904	2	4,871	3	5,124	1
Salesworkers	4,437	5	4,414	6	5,562	1	4,833	3	5,526	2	4,776	4
Craftsmen and foremen	4,691	5	4,346	6	4,802	4	5,056	3	5,374	2	5,833	1
Masons	3,246	6	3,566	5	4,334	4	4,414	3	4,634	2	5,854	1
Painters	3,505	3	2,993	6	3,454	4	3,408	5	3,605	2	3,739	1
Operators	3,388	5	2,945	6	3,861	4	4,131	3	4,376	2	5,381	1
Auto service station attendant	2,172	4	1,926	5	2,498	2	2,527	1	2,341	3	1,831	6
Truckdriver	3,334	5	3,021	6	3,892	1	3,748	2	3,717	3	3,691	4
Welders	4,595	3	3,710	6	4,471	5	4,571	4	5,343	2	5,625	1
Service workers	2,788	3	2,362	6	2,702	5	2,833	2	2,771	4	3,486	1
Barbers	3,022	4	3,019	5	3,519	2	3,507	3	3,566	1	2,985	6
Cooks	2,682	5	2,577	6	2,719	3	2,685	4	2,987	2	4,678	1
Guards	3,793	1	3,051	5	3,291	4	3,671	2	3,393	3	1,808	6
Waiters	2,203	1	1,454	4	1,856	3	1,538	6	2,174	2	1,635	5
Laborers, except farm and mine	2,386	4	2,057	6	2,367	5	2,552	3	2,903	2	3,027	1
Manufacturing	2,775	5	2,506	6	2,843	4	3,322	3	3,619	2	4,655	1
Nonmanufacturing	2,337	3	1,904	6	2,296	4	2,413	2	2,526	1	2,107	5
All female workers	1,836	5	1,938	4	2,322	1	1,970	3	2,197	2	1,615	6
Clerical and kindred	2,656	6	2,865	4	3,125	2	2,867	3	3,225	1	2,748	5
Bookkeepers	2,855	5	2,864	4	3,286	2	2,805	6	3,331	1	2,887	3
Cashiers	1,724	5	1,617	6	2,089	1	1,762	3	1,785	2	1,751	4
Secretaries	3,147	4	3,089	5	3,568	2	3,269	3	3,707	1	3,015	6
Stenographers	3,290	6	3,322	5	3,417	4	3,607	3	3,791	1	3,733	2
Telephone operators	2,996	6	3,133	5	3,353	2	3,276	4	3,348	3	3,408	1
Typists	2,601	3	2,927	1	2,530	5	2,584	4	2,707	2	1,828	6
Salesworkers	1,292	6	1,478	4	1,817	2	1,460	5	1,900	1	1,513	3
Operators	1,711	4	1,559	6	2,223	1	1,848	3	1,886	2	1,576	5
Laundry	1,376	4	1,279	5	1,544	1	1,420	2	1,403	3	1,184	6
Private household	617	6	745	3	799	2	709	4	831	1	637	5
Service workers	1,130	4	1,171	3	1,321	1	1,116	5	1,316	2	1,002	6
Industrial attendants	1,388	5	1,588	2	1,445	4	1,190	6	1,599	1	1,485	3
Cooks	1,071	6	1,308	2	1,262	3	1,175	5	1,342	1	1,203	4
Waitresses	984	3	929	4	1,014	2	906	5	1,025	1	859	6

Source: U.S. Bureau of the Census, "Census of Population, 1960."

C. *Manufacturing average hourly earnings.*—Wages in El Paso manufacturing are extremely low. El Paso ranked lowest of the eight major Texas areas (El Paso, Austin, San Antonio, Beaumont, Corpus Christi, Dallas, Fort Worth, and Houston) for which the Texas Employment Commission published average hourly earnings in manufacturing.

Austin and San Antonio had lower earnings for durable goods, but El Paso had by far the lowest average for nondurable goods.

El Paso did not rank on the bottom for durable goods because it is the location of a large copper refinery and a large copper smelter. Wages in these establishments are high because the workers have effective trade unions. The refinery and smelter are branches of large corporations and collective bargaining between management and labor is on a regional basis, thus causing the unique situation of El Paso with its commuter problem to be of little importance in the determination of wages of El Paso copper workers.

Nondurable goods employment in El Paso is heavily concentrated in garment manufacturing—almost 75 percent of all nondurable goods workers are in this industry. The wage rates in garment manufacturing are little more than the minimum required by the Fair Labor Standards Act. Large numbers of alien commuters (mainly women) are employed in this industry. The existence of this industry is a recent phenomenon and many local residents believe garment firms moved to El Paso to take advantage of the large supply of labor and the low-wage scale; both conditions are due, in part, to the commuter situation.[1]

Table 4 contains average hourly earnings data in manufacturing in El Paso and other Texas cities.

TABLE 4—AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES, 8 MAJOR TEXAS CITIES, 1966

	Average hourly earnings		
	All manufacturing	Durable goods	Nondurable goods
Texas	$2.57	$2.62	$2.52
El Paso	1.90	2.46	1.72
Austin	1.98	1.71	1.26
Beaumont	3.35	3.03	3.48
Corpus Christi	2.96	2.57	3.26
Dallas	2.37	2.52	2.10
Fort Worth	2.81	2.97	2.39
Houston	3.00	2.87	3.16
San Antonio	1.98	1.92	2.02

Source: "The Texas Labor Market," Texas Employment Commission

D. *Special commuter survey—Laredo.*—A special study of alien commuter problems—jobs held by commuters, wages received, and availability of domestic workers for these jobs—was made by the U.S. Department of Labor in the summer of 1961.

The study showed that commuters were employed in most occupations and industries, but concentrated most heavily in garment manufacturing, hotels, restaurants, and retail trade and service establishments. A sample of firms employing 3,000 workers was contacted. These firms employed 438 Mexican aliens identifiable as commuters. In addition, the survey team suspected that other alien employees of these firms were commuters, although they had given U.S. addresses to their employers.

When the survey was conducted, unemployment was very heavy in Laredo—11.3 percent. Large numbers of U.S. workers had the same occupational skills as the alien commuters and were unemployed at the time of the survey. For example, the two garment manufacturing firms in the sample employed 88 alien commuters as sewing machine operators. The Texas Employment Commission office files contained applications from 156 unemployed U.S. workers with this occupation.

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[1] Other border areas in Texas, Laredo and Eagle Pass, have also attracted garment firms recently. A recent economic survey of Eagle Pass reports: ". . . it seems that the factors that have drawn garment manufacturers to Eagle Pass as a production site, *conspicuously the low cost of labor*, are likely to continue in the future." (Italic supplied.) Robert H. Ryan, Charles T. Clark, and L. L. Schkade, "Bridge into the Future Eagle Pass, Texas," Area Economic Survey No. 18 (Austin: Bureau of Business Research, University of Texas, 1964) pp. 82–83. Quoted by Lamar B. Jones, "Mexican-American Labor Problems in Texas," unpublished Ph. D. thesis, University of Texas, 1965.

The survey revealed a very common pattern of firms employing alien commuters paying lower wages than did firms employing U.S. workers. From the data collected in the survey, it was possible to make comparisons of the wage rates paid for 19 occupations by firms engaged in similar activities. The firms employing only domestic workers paid higher rates for 15 of the occupations; in one occupation the rates paid were the same; and for three occupations the firms employing alien commuters paid higher rates. There were also instances where the same firms paid its alien commuters less than it paid U.S. workers for the same work. The average of the wage rates for these 19 occupations paid by the firms employing only U.S. workers was 38 percent higher than the average rates paid by the firms employing alien commuters. Table 5 lists the occupational wage data obtained in survey.

TABLE 5.—OCCUPATIONAL WAGE STRUCTURE, LAREDO, TEX., JUNE 1961

Industry and occupation	Average wage rate (per week)	
	Firms employing only domestic workers	Firms employing domestic and alien commuter workers
Hotels and motels:		
Cook	$58	$34
Maid	20	17
Hallboy	25	20
Waiter	[1] 15	[1] 18
Busboy	[1] 25	13
Bartender	58	46
Bellboy	[1] 15	[1] 16
Drugstores and related firms:		
Cashier	27	12
Stock clerk	52	40
Fountain girl	16	[2] 23
Drug clerk	77	55
Grocery and related firms:		
Cashier	$24	$24
Stockboy	35	20
Produceman	45	35
Butcher	65	52
Warehouseman	37	31
Miscellaneous retail firms:		
Porter	53	35
Warehouseman	73	21
Stockman	53	45

[1] Plus tips.

[2] Plus $3 meal allowance.

Note.—Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported, these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed for the few occupations where data were reported for each worker.

E. *Special commuter survey—El Paso.*—The El Paso special study was similar in concept and scope to the Laredo survey discussed above. The survey was made in the summer of 1961. Seventy-five firms were surveyed. At least 1,000 alien commuters were employed by these firms. However, it is believed many more were employed: some firms did not provide information about the residence of their workers. In other cases, workers identified as alien residents of the United States were probably, in fact, residents of Mexico and had provided false addresses. One garment manufacturing firm, for example, claimed none of its employees were commuters; *but it ran a bus to the border to pick up workers.*

For the most part, the alien commuters were employed in the less skilled and more menial occupations—busboy, dishwasher, laborer, salesclerk, maid, housecleaner, sewing machine operator. Alien commuters, however, were also employed in skilled jobs. Many worked in organized firms and were members of trade unions.

The data collected in the El Paso survey cannot be summarized as were the Laredo data (table 5). In some industries studied, all of the sample firms employed commuter aliens. In other industries, the sample firms refused to provide wage information or attempt to determine if any of their employees were alien commuters. The wage structure in other firms was determined by collective bargaining agreements negotiated on a national or regional basis and thus unaffected by commuters.

Where information was supplied, it was apparent that wage rates paid alien commuters were usually low. In about one-half of the occupations studied, the wage rates paid commuters were lower than what unemployed job applicants registered for work with the Texas Employment Commission said they would accept. These occupations were: sales men and women, cooks, laundry workers, painters, carpenters, and general manufacturing workers. In other classifications, salesclerks, kitchen helpers, packinghouse workers, laborers, and truckdrivers, the commuter aliens were paid rates commensurate with the expectations of unemployed domestic workers.

Following is a summary of the survey results:

Eleven construction firms.—Six firms employed only U.S. residents; five employed alien commuters. Two-thirds of the firms employing only U.S. residents paid the union scale. Only 20 percent of the firms employing commuters paid the union scale. The lowest rates were paid by the nonunion firms that employed commuters.

Four retail dry goods stores.—Three firms employed alien commuters. They paid lower wage rates than the firm that employed only U.S. residents.

Four wholesale and warehouse firms.—Three firms employed alien commuters. The firm employing only U.S. residents paid the highest wage rates.

All sample firms in the following industries employed alien commuters: Garment manufacturing (11 firms); restaurants (five firms); meatpacking (three firms); and laundries (four firms). Of interest is the fact that in the one laundry where wage rate data were supplied for both alien commuters and U.S. residents, the commuters were paid less than $0.50 per hour while the U.S. residents were paid about $0.80 per hour.

Insufficient wage and employment data were obtained to make any comparison for seven transportation and storage firms; two cotton processors; and three hotels and motels.

In several industries, refineries (four firms); miscellaneous manufacturing (seven firms); and miscellaneous firms (five establishments), there was no difference in the rates paid by firms employing alien commuters and those employing U.S. workers. One refinery, two miscellaneous manufacturing, and two of the other miscellaneous firms employed commuters.

Six other retail trade firms were included in the sample, but meaningful comparisons could not be made because the nature of their operations and the occupations of the workers they employed were too dissimilar.

F. *Unemployment in Texas border cities.*—The Texas Employment Commission prepares and publishes unemployment estimates for 22 Texas cities. In 1966 these data revealed that unemployment in border towns was substantially greater than in interior cities. Laredo had the highest rate—9.6 percent. The average rate for the four border areas (Brownsville-Harlingen-San Benito; El Paso; Laredo; and McAllen-Pharr-Edinburg) was 6.6 percent, almost 95 percent greater than the 3.4-percent rate in the 18 interior areas.

High unemployment rates are indicative of labor surpluses, surpluses that in turn cause lower wage rates as employers find it unnecessary to bid up wages to attract workers. The fact that unemployment is heavy and wage rates are low in the border towns is not coincidental. Workers residing in Mexico contribute to the labor surplus by filling jobs that United States residents would otherwise have—and frequently take them at wage rates unacceptable to United States residents.

Table 6 lists 1966 local unemployment rates for Texas; table 7 compares the volume of alien commuters in January 1966 with estimated unemployment in each of the Texas border towns for the same time period.

TABLE 6.—UNEMPLOYMENT RATES IN 22 TEXAS CITIES, 1966

City	Rate	Rank	City	Rate	Rank
4 border cities	6.6		18 interior cities—Continued		
Brownsville-Harlingen-San Benito	6.5	21	Galveston-Texas City	4.7	19
El Paso	4.4	17	Houston	2.4	1
Laredo	9.6	22	Longview-Kilgore-Gladewater	3.3	8
McAllen-Pharr-Edinburg	5.8	20	Lubbock	3.8	13
18 interior cities	3.4		Midland-Odessa	3.4	9
Abilene	3.6	11	San Angelo	3.4	9
Amarillo	2.9	4	San Antonio	4.3	16
Austin	2.6	3	Texarkana	3.8	13
Beaumont-Port Arthur-Orange	4.0	15	Tyler	3.3	7
Corpus Christi	3.7	12	Waco	4.4	17
Dallas	2.5	2	Wichita Falls	3.0	6
Fort Worth	2.9	4			

Source: "The Texas Labor Market," Texas Employment Commission.

TABLE 7.—TEXAS BORDER CITIES; UNEMPLOYMENT AND ALIEN COMMUTERS, JANUARY 1966

City	Unemployed U.S. residents		Alien commuters
	Number	Rate	
Brownsville-Harlingen-San Benito	3,020	6.2	2,032
El Paso	5,050	4.8	11,772
Laredo	3,365	12.6	2,581
McAllen-Pharr-Edinburg	4,190	6.9	1,163

Source: Unemployment data from "The Texas Labor Market," Texas Employment Commission; alien commuter data from I. & N.S. survey, Jan. 17, 1966.

ARIZONA

Alien commuters do not constitute as much of a problem in Arizona as they do in Texas. Only two border towns have any significant volume of alien commuter workers—San Luis, 4,200 and Nogales, 1,600. About 400 alien commuters cross the border at Douglas and another 100 at Naco. Employment and wage data for local Arizona communities are very limited, making it difficult to evaluate the economic impact of commuters. Farm wage data are available from the reports of the Arizona State Employment Service and that Agency has also published some occupational wage data for nonfarm jobs in its annual publication, "Arizona Basic Economic Data." Since Arizona has no sizable border cities, no earnings data are available from the 1960 census.

A. *Farm wage data.*— Data concerning wages for seasonal farm work in Arizona do not reveal any adverse impact exerted by alien commuters, despite a heavy volume of commuting into Yuma County where over half the farm workers employed are commuters who cross at San Luis. In the three major farming areas in Arizona, Maricopa, Pinal, and Yuma Counties, wages were highest in Yuma County, the only county where alien commuting occurs. The average hourly wage for seasonal farmwork in Yuma County, November 1966, was $1.31 per hour versus $1.29 in Pinal County and $1.26 in Maricopa County.

The reason for this anomalous situation, compared to wage patterns in other border areas, stems from unique conditions in the Yuma area. The farm work force in Yuma County for many years was dominated by Mexican aliens—Mexican contract workers admitted under Public Law 78 and/or illegal wetback workers prior to the wetback cleanup in the early 1950's. There was practically no resident domestic work force doing seasonal farm work in Yuma County. The prevailing wage rate in Yuma was whatever the Department of Labor required be paid to the Mexican contract workers.

When Public Law 78 ended in 1964, this situation changed. No longer was the labor force for seasonal farm work furnished by the Government. Growers had to compete with each other for available workers by bidding up wages. For the most part, the workers they were trying to attract were Mexican immigrants, some of whom lived in Yuma County; others lived in Mexico; and still others moved into Yuma from other areas in Arizona and California. In other areas of Arizona, the labor force was not so heavily composed of contract workers and the impact of Public Law 78's termination was not as severe; more local residents were available to replace the contract workers. Thus in Yuma there was more active competition in the wage area; this competition was successful in attracting workers, but many of the new workers were Mexican immigrants who chose to live in San Luis, Mexico, rather than in the United States.

Between May 1963 and January 1966, alien commuting increased almost fourfold, from about 1,100 to about 4,000. (Data are not available concerning the proportion of the 1963 commuters that worked in farm jobs. In 1966, about 85 percent did farm work.) Between 1963 and 1966, wage rates for seasonal farmwork in Yuma County increased 35 percent, compared to a 25-percent increase increase in Maricopa County, and a 10-percent increase in Pinal County where contract workers were largely eliminated prior to 1963.

B. *Nonfarm occupational wage data.*—The Arizona State Employment Service has published wage rate ranges, by county, for about a dozen occupations. Separate data are published for two Cochise County towns, Douglas and Bisbee. Although the two towns are only about 20 miles apart, there is a significant difference in the pattern of alien commuter employment. Douglas is directly on the border and about 400 aliens commute to jobs in the United States from Agua Prieta, Mexico; about 75 percent of them work in Douglas, the remainder in farm jobs in the Elfrida areas, north of the city. There is very limited public transportation between Bisbee and Douglas, and very few alien commuters, or even Douglas residents for that matter, work in Bisbee. While Bisbee itself is only 10 miles from the border, the closest Mexican border town, Naco, is very small. Only about 100 alien commuters cross from Naco to work in the Bisbee area. Thus, alien commuters would have a much greater impact upon Douglas than upon Bisbee despite the closeness of the towns.

The Employment Service data reveal lower wage rates existing in Douglas than in Bisbee, indicating that the commuter situation may have adversely affected rates in Douglas. As shown in table 8, seven occupations are listed which can be compared. Comparing the low point of the wage ranges shown for each occupation, four of the occupations in Douglas have lower rates while the other three are the same. Comparing the high point of the wage ranges, five of the occupations are lower in Douglas, one higher and one the same.

TABLE 8.—WAGE RATES PAID IN BISBEE AND DOUGLAS, ARIZ.: SELECTED OCCUPATIONS, 1966

Occupation	Bisbee	Douglas
Staff nurse	$425 to $525 per month	$400 to $525 per month.
Stenographer	$400 to $535 per month	$350 to $420 per month.
Salesperson	$1.25 to $2.15 per hour	$1.25 to $2 per hour.
Cook	$10 to $14 per day	$10 to $12 per day.
Carpenter	$2.50 to $4.645 [1] per hour	$2.50 to $4.685 [1] per hour.
Auto service station attendant	$1.25 to $1.50 per hour	$1 to $1.25 per hour.
Welder	$3 to $4.70 per hour	$1.50 to $2.75 per hour.

[1] Higher rate is union scale.

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

Of the three Arizona counties where any appreciable volume of alien commuting occurs, commuting to nonfarm jobs is greatest in Santa Cruz County (Nogales is the major town in this county). The 1,600 alien commuters make up about one-third of the county's work force; over 90 percent work mainly in nonfarm jobs. In contrast, the alien commuters working in Cochise County (Bisbee and Douglas) constitute only about 3 percent of the work force. In Yuma County (San Louis is the border entry point) alien commuters make up 19 percent of the work force, but are heavily concentrated in agriculture. Over half of the farmworkers employed in the county are alien commuters, while only about 5 percent of the nonfarm workers are alien commuters. Thus, any impact of alien commuters upon the nonfarm wage structure in Arizona would be primarily concentrated in Santa Cruz County.

Occupational wage data published in "Arizona Basic Economic Data" clearly show that wage rates in Santa Cruz County tend to be lower than in other areas. Of the nine occupations for which data are available for 12 areas in the State, wage rates in Santa Cruz County are lowest (or tied for lowest) for five occupations—clerk typist, carpenter, auto service attendant, truckdriver, and welder; second lowest for stenographer and cook; third lowest for nurse; and fourth lowest for salesperson. Table 9 lists the occupation wage data published in "Arizona Economic Data."

TABLE 9.—WAGE RATES FOR SELECTED OCCUPATIONS, BY COUNTY, 1966

Occupation	Apache and Navajo	Cochise	Coconino	Gila	Graham and Greenlee	Maricopa	Mohave	Pima	Pinal	Santa Cruz	Yavapai	Yuma
Nurse (per month)	$315–$335	$400–$525	$250–$480	$400–$500	$275–$350	$420–$463	$395–$420	$340–$400	$350–$400	$325–$375	$425–$475	$400–$475
Stenographer (per month)	275–325	350–534	285–450	265–310	260–350	325–400	300–325	285–350	275–300	250–325	240–320	200–335
Clerk-typist (per month)	240–260	325–410	200–400	220–265	215–260	270–360	250–275	225–315	240–260	200–250	225–275	275–316
Salesperson (per hour)	1–1.25	1.25–2.15	1.10–2	.90–1.25	1–1.25	10–1.66	1.25–1.50	1.25–1.40	1.25–1.75	1.25–1.35	1.25–1.35	1.25–1.75
Cook (per day)	12–14	10–14	9–22.50	10–16	10–12	10–18	12–18	14–18	9–11	10–12	10–13	16–20
Carpenter (per hour)	2.25–5.25	2.50–4.685	2.50–4.505	3.20–4.50	3–4	3–4.685	3–5.13	3–4.50	2.50–4.385	2–4.25	2.50–4.505	2.50–4.385
Auto service station attendant (per hour)	1.10–1.40	1–1.50	1.25–1.75	1–1.50	1.25–1.75		1.25–1.50	1.25–1.35	1.10–1.25	1–1.25	1.10–1.35	1.25–1.50
Truckdriver, light (per hour)	1.15–1.35		2.12–3.78	1.50–2	1.50–2		1.25–1.50	1.25–1.75	1.25–1.50	1.25	1.50–2	1.35–1.75
Welder (per hour)	2.75–4.97	1.50–4.70	2.76–4.86	3.19–5.04	2–2.50		2–4.25	2.50–4.65	2–2.50	1.50–2	2.25–2.85	2.50–3.25

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

Mr. Ben Zweig, currently Executive Director of the Santa Cruz County and city of Nogales Economic Opportunity Community Action Committee, and formerly the American Consul at Nogales (1943–51) and Nuveo Laredo (1957–63), commented upon the commuter situation in an interesting fashion before the President's National Advisory Commission on Rural Poverty. Mr. Zweig said, "There is no doubt the daily influx of more than a thousand workers into this small community depresses wages." He went on to state commuters live in Mexico for two reasons: ". . . because living is cheaper, but also because they are unable to obtain immigrant visas for the immediate members of their families." According to Mr. Zweig, the reason visas cannot be obtained is the commuters earn such low wages they cannot prove their families would not become public charges. If Mr. Zweig's comments are correct, we have a situation that would be ludicrous if it were not so pitiful: Mexican aliens are admitted as immigrants. They satisfy the public charge requirements of immigration policy by accepting work in low paid jobs. But the jobs are so low paid they are not viewed as meeting the public charge requirements for the workers' families.

The 1960 census also contains data relating to the low earnings in Santa Cruz County supporting the previous discussion that indicated wages in this area are among the lowest in the State. According to the census, median earnings in 1959 of Santa Cruz County male residents were $3,666—lower than any county except Apache. (Earnings in this county are depressed because of the large Indian population.) For female residents, Santa Cruz County ranked 11th among the 14 Arizona counties.

CALIFORNIA

Large numbers of alien commuters work in California, crossing at two major points of entry, Calexico and San Ysidro. Calexico is in the rich farming area of the Imperial Valley. About 85 percent of the 7,500 to 8,000 alien commuters work in agriculture. San Ysidro is within the San Diego metropolitan area and about 40 percent of alien commuters work in agriculture with the remainder working in a wide variety of nonfarm jobs. Data concerning the occupational characteristics of the alien commuters working in nonfarm jobs in San Diego are not available, but there is no reason to suspect that such workers would be much different than those crossing into El Paso. There they worked for the most part in the lowest skilled, most menial jobs.

Data concerning wages, employment, and unemployment in border areas and the alien commuter problem in California indicate that in this state, as in Texas and Arizona, economic conditions are much worse on the border.

A. *Farm wages.*—According to data collected by the California Department of Employment, farm wages in California are lowest in the border areas. The average wage for seasonal farmwork in November 1966 was $1.42 per hour in the two border counties, Imperial and San Diego. Wage rates for similar work in the remainder of the state were 6 percent higher.

Most of the seasonal farm work in the border areas is done by alien commuters. The number of alien commuters that cross at Calexico is equal to about 90 percent of seasonal farm employment in Imperial County. Some of the alien commuters actually commute out of Imperial County to jobs in the Coachelle Valley, over 60 miles north of the border. In all, however, alien commuters probably make up about 85 percent of the seasonal work force in Imperial County. The same situation prevails in San Diego County. The number of alien commuters crossing at San Ysidro is equal to almost all of the workers employed in seasonal farm jobs in the county. Since some aliens also commute out of the San Diego County, the proportion that aliens constitute of the seasonal work force is less than 100 percent—probably about 85 or 90 percent.

There is also a significant volume of commuting by U.S. citizens residing in Mexico. About 1,600 such workers cross at Calexico to do farmwork and another 800 enter the United States at San Ysidro. It is clear that for practical purposes nearly all of the seasonal farmworkers employed in San Diego and the Imperial Valley live in Mexico.

Considering this fact, it is perhaps surprising that farm wage rates are not even lower. They are not because of the same factor present in the Yuma, Ariz., situation—the termination of Public Law 78. When this program was in existence, most of the seasonal farmwork was done by contract Mexican workers. As the program ended, farmers had to compete for whatever domestic workers were available. For the most part, these were Mexican aliens who had previously been admitted as immigrants. They accepted the farm jobs formerly held by alien contract workers at the higher wage rates employers were offering. When the alien contract workers dominated the farm labor force, particularly in Imperial County, farmworker housing was geared to the contract worker. Barracks-type housing for single male workers was the standard. Family housing for farmworkers was available only on a very limited basis. Thus when alien contract workers were replaced by U.S. citizens or alien immigrants, almost the only available family housing was in Mexico.

On the border in California, as in Arizona, the end of the bracero program increased alien commuting. But at the same time it also caused sharp wage rate increases, thus militating against—perhaps disguising is a more apt description—the adverse impact of the commuter situation. Total alien commuting jumped over 50 percent[2] between 1963 and 1966, but seasonal farm wages still increased 35 percent, one-fourth greater than the increase in wages for the same kind of work in the rest of the state.

B. *1960 census of population median earnings data.*—The published statistics of the 1960 census contain data for eight major metropolitan areas, one of which was San Diego. However, the area is so large that the smaller number of alien commuters would not be expected to have very much impact. The total volume of alien commuters amounted to less than 3 percent of the total labor force; those working in nonfarm jobs to only about 1.5 percent of nonfarm employment. Furthermore, the structure of industry in San Diego includes several relatively well paid industries. The Federal Government has a large naval installation in the area and several aircraft manufacturing firms are also present.

Nonetheless, there is evidence to indicate that economic conditions in San Diego are poorer than in other major California cities. San Diego ranked only fifth highest among the eight major cities in median earnings of male workers, and fourth highest for female workers. Earnings were lower in San Diego than in the largest urban areas, but higher than earnings in the interior valley cities where farming is an important activity. Of particular significance are the data for the occupations in which most of alien commuters probably work. The earnings of farm laborers, $1,621, were the lowest of all eight areas. Comparing Los Angeles and San Diego, the earnings of San Diego residents were 8 percent lower for male salesworkers; 18 percent lower for male farmworkers; 5 percent lower for female clerical workers; 8 percent lower for female salesworkers; 18 percent lower for female private household workers; and 14 percent lower for female service workers.

As was previously mentioned, the census data, which are collected from households in the United States, do not fully measure the impact of commuters because they reside in Mexico. If commuters were included in the census enumeration, the census median earnings would be lower than was reported. This is demonstrated by social security program data. These data show, for 1965, that average earnings in San Diego County were seven percent lower than in Los Angeles County. However, the census data showed median earnings of all male workers to be only .2 percent lower in San Diego County. The median earnings of women workers were about 8 percent lower. Table 10 lists earnings data from the 1960 census of population.

C. *Unemployment in California border area.*—The California Department of Employment has prepared estimates of unemployment for both San Diego County and the Imperial Valley. The unemployment rate in 1966 in San Diego was 5.2 percent, somewhat higher than the Lose Angeles-Long Beach rate of 4.5 percent and San Francisco-Oakland rate of 4.4 percent. In the Imperial Valley, where alien commuters form a much greater proportion of the work force, the unemployment rate was 10 percent, double the average rate for the entire state.

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[2] There is reason to suspect alien immigrant commuting increased more than 50 percent. In 1963 alien contract workers employed in the Imperial Valley were permitted to live in Mexico and commute to their jobs. Some of these workers may have been counted as commuters in the 1963 I&NS survey.

TABLE 10.—MEDIAN EARNINGS IN 1959 OF PERSONS IN THE EXPERIENCED LABOR FORCE BY SEX AND OCCUPATION—MAJOR CALIFORNIA CITIES

Occupation	San Diego	Los Angeles-Long Beach	Bakersfield	Fresno	Sacramento	San-Bernardino-Riverside-Ontario	San Francisco-Oakland	San Jose
All male workers	5,672	5,684	5,119	4,498	5,709	5,069	5,705	5,998
Farmers and farm managers	3,331	3,731	6,537	4,317	4,242	3,796	4,070	4,500
Clerical and kindred	5,259	5,108	5,247	4,982	5,179	5,182	5,166	5,344
Salesworkers	5,338	5,828	5,473	5,445	5,554	5,216	5,816	5,971
Salesmen and clerks	5,397	5,885	5,467	5,481	5,639	5,309	5,913	5,090
Retail trade	4,850	4,940	4,817	4,775	4,880	4,552	5,056	5,107
Craftsmen, foremen	6,182	6,088	6,035	5,448	6,113	5,582	6,223	6,435
Carpenters	5,803	5,701	5,398	5,085	5,907	5,119	6,065	6,188
Painters	5,368	4,761	5,165	4,510	5,624	4,634	5,320	5,511
Plasterers	6,468	6,068	6,049	5,978	6,122	5,487	6,011	6,534
Operatives and kindred	5,216	5,089	5,142	4,404	5,078	4,825	5,270	5,339
Attendants, auto	2,750	2,869	2,520	2,802	2,730	2,573	3,003	2,589
Meatcutters	6,051	6,104	5,739	5,804	5,747	5,871	6,096	6,419
Truck drivers	5,390	5,550	4,650	4,941	5,391	4,987	5,848	5,939
Welders	5,991	5,431	5,879	5,094	5,777	5 322	5,832	5,829
N.E.C. manufacturing	5,237	5,068	5,595	4,306	5,165	4,836	5,320	5,198
Durable	5,305	5,018	4,631	4,195	5,500	4,901	5,113	5,413
Nondurable	4,863	5,169	5,922	4,399	4,784	4,502	5,518	4,674
Service workers	4,042	3,977	3,909	3,594	4,076	3,605	4,193	3,873
Barbers	4,757	4,315	4,244	4,149	4,932	3,873	4,501	4,535
Cooks	3,777	4,234	3,619	3,737	3,942	3,847	4,321	4,533
Guards	5,390	4,416	4,073	3,357	5,094	4,591	4,481	4,258
Waiters	4,266	3,637	3,870	3,489	3,631	3,368	4,090	2,448
Farm laborers and foremen	1,621	1,964	2,281	1,960	1,815	1,785	1,999	2,274
Laborers, except farm and mine	3,753	3,684	3,462	2,924	3,965	3,407	4,473	3,760
Manufacturing	4,413	3,929	4,446	3,109	3,765	4,018	4,292	3,817
Durable	4,457	3,852	4,346	3,007	4,021	4,140	4,295	4,603
Nonmanufacturing	3,761	3,402	3,473	2,883	3,841	3,206	4,066	3,988
Construction	4,370	4,309	4,233	3,944	4,422	3,906	4,313	4,526

All female workers	2,729	2,957	2,154	2,038	3,042	2,307	3,165	2,635
Clerical	3,304	3,484	3,221	2,927	3,512	3,142	3,577	3,226
Bookkeepers	3,318	3,653	3,219	3,016	3,512	3,112	3,638	3,138
Cashiers	2,410	2,937	2,635	2,248	2,491	2,557	3,004	2,408
Office machine operators	3,606	3,612	3,548	3,154	3,526	3,509	3,634	3,384
Secretaries	3,525	4,034	3,649	3,161	3,945	3,338	3,976	3,574
Stenographers	3,589	3,799	3,713	3,648	3,814	3,388	3,885	3,498
Telephone operators	3,285	3,363	3,369	3,351	3,465	3,147	3,659	3,325
Typists	3,081	3,091	2,887	2,814	3,356	2,993	3,244	2,683
All other	3,277	3,287	3,049	2,628	3,420	3,061	3,456	2,093
Salesworkers	1,859	2,021	1,494	1,666	1,936	1,773	2,426	1,805
Retail trade	1,892	1,935	1,494	1,693	1,831	1,783	2,365	1,842
Operatives	2,866	2,676	1,733	1,529	1,976	1,872	2,696	1,947
Laundry	2,226	2,196	2,123	2,273	2,199	1,988	2,467	2,600
Private household	724	886	672	654	643	659	842	691
Live out	667	807	665	635	623	641	780	647
Service	1,698	1,969	1,589	1,594	1,871	1,545	2,191	1,843
Institute attendants	2,369	2,440	2,448	2,309	2,390	2,815	3,043	2,492
Cooks	2,163	2,203	1,773	1,690	2,020	1,901	2,348	2,231
Waitresses	1,464	1,638	1,329	1,312	1,472	1,354	1,802	1,565

Source: U.S. Bureau of the Census. Census of Population. 1960.

SUMMARY

The "commuter" problem and low wages and unemployment in American cities on the Mexican border

About 44,000 alien commuters live in Mexico and work in U.S. cities.

Another 18,000 U.S. citizens commute to their U.S. jobs from residence in Mexico.

90 percent of the commuters are in eight border areas: Brownsville, Laredo, Eagle Pass, and El Paso, Tex.; Nogales and San Luis, Ariz.; Calexico and San Ysidro, Calif.

Unemployment in Texas border cities is almost 95 percent greater than in Texas interior cities.

Alien commuters work most often in the lowest skilled, most menial, and lowest paid jobs: seasonal farmwork, maids, kitchen helpers, sales clerks, sewing machince operators.

Wages for seasonal farmwork in Texas border areas are over 30 percent less than in the rest of the State.

Firms that employ alien commuters tend to pay lower wages than firms that employ only U.S. residents.

Firms that employ alien commuters frequently pay them less than what they pay U.S. residents for the same work.

Wage rates paid to commuters are often less than what unemployed U.S. residents say they are willing to accept.

Greatest number of alien commuters in Arizona cross the border at San Luis for farmwork in the Yuma area. Farm wages, however, in this area are high because the great number of alien commuters is a relatively new phenomenon resulting from efforts to attract a new labor supply after Public Law 78 terminated.

Wage rates for nonfarmwork in Arizona border areas are very low in comparison to rates in other areas. Workers in Santa Cruz County, where most nonfarm alien commuters work, have the lowest earnings in the State, except for Apache County where poverty on the Navajo Indian Reservation depresses earnings.

California farm wage rates are lowest in the border areas. The bulk of the farmwork force in these areas is composed of alien commuters.

Alien commuters loom the largest in the Imperial Valley where they constitute about 30 percent of the total work force, and about 85 percent of the farmwork force. Unemployment in this area was 10 percent of the labor force in 1966, twice the average rate for the entire State.

In San Diego, another area where large numbers of alien commuters work, wage rates were lower, and unemployment higher, than in Los Angeles.

EXHIBIT 3

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, June 19, 1968.

Hon. RAMSEY CLARK,
Attorney General,
Washington, D.C.

DEAR RAMSEY: I am enclosing a report with recommendations from the Labor Department staff on the Delano situation. I have seen a draft of the Immigration and Naturalization Service report, and I realize there are some differences in interpretation of the troubled relations between the INS and the United Farm Workers Organizing Committee in California. Our staff believes that the hostility and mistrust are so deep that there must have been some cause, whether it be poor judgment, lack of communication, or whatever. They also believe some ameliorative steps have been taken. However, the basic problem still lies in the whole concept of immigrants who reside in another country. The aggravation of this low-skilled and low-wage work force on the workers of the Southwest grows daily. Much of the energy and anger of the growing Mexican-American militancy in the Southwest is aimed at the workers who live in Mexico, but who claim the economic benefits of being a U.S. citizen. The Mexican-American social groups and the unions such as the UFWOC cannot rest until this problem has been resolved.

Therefore, I urge that the Federal Government move to control the impact of the commuters. A new and simpler strike regulation which excludes all commuters from struck firms should be promulgated immediately. A system of identifying commuters should be devised, and to that end, I will provide Labor Department staff to help absorb the workload. Ultimately, all commuters should be excluded unless they can prove they are not adversely affecting U.S. workers.

I urge your careful consideration of this matter. Stan Ruttenberg and I would like to discuss this with you personally at the earliest opportunity.

Sincerely,

WILLARD WIRTZ,
Secretary of Labor.

ALIEN COMMUTER PROBLEMS

(Report of Labor Department members of joint Labor-Justice fact-finding group)

Because of pronounced irreconciliable differences in their reactions to meetings and discussions with union officials during the Delano visit, the Task Force members have agreed to submit separate reports. This report, then, is submitted by the Labor Department representatives of the joint Justice-Labor Task Force.

On Monday, May 6, the members of a joint fact-finding group of the Justice Department and Labor Department met in Bakersfield, California. Present were:

Mario Noto, Associate Commissioner, INS.

Charles Gordon, General Counsel, INS.

Donald Coppock, Deputy Associate Commissioner, in Charge of Border Patrol, INS.

Michael Fargione, Deputy Regional Director, Southwest Region, INS.

Leonard W. Gilman, Associate Deputy Regional Director, Southwest Region, in Charge of Travel Control, INS.

Frank Borda, Deputy Assistant Secretary for Manpower, DOL.

Ken Robertson, Regional Manpower Administrator, San Francisco, DOL.

Lawrence W. Rogers, Assistant to the Administrator, BES, DOL.

Roberto Ornales, Mexican American Desk Director, Manpower Administration, DOL.

Mr. Noto outlined the mandate given to the task force by the Attorney General as follows: Review the entire situation concerning the use of commuter green card workers by employees in the Delano area. The examination was to assure that the proper policy emphasis on enforcement of the regulation was made clear to all Immigration and Naturalization Service personnel. The procedures for administering the regulation were to be examined to see what improvements could be made. Finally, meetings would be held with the United Farm Workers Organizing Committee to create a proper liaison with that organization.

The task force discussed the various problems they might encounter in Delano in carrying out the Attorney General's directive. The prominent problem seemed to be the attitude which the union and its members have toward the Immigration and Naturalization Service, which specifically is alleged discrimination by the Service against the union and its members in favor of the employers in this particular area.

Subsequent to the foregoing discussions, the Labor Department representatives urged that the task force convene at Delano, California, since the problems to be reviewed centered around that city. The INS members agreed, although there were some misgivings that undue public attention might result.

Mr. Cesar Chaves, Director.

Mr. James Drake, Member.

Mr. Jerry Cohen, Counsel.

Mr. Leroy Chapfield, Administrative Officer.

Mr. Marshall Ganz, Executive Board Member.

Mr. Larry Itliong, Assistant Director.

Mr. William Kircher, Director of Organization, AFL–CIO.

Mr. Kircher had been present at the meeting with the Attorney General when it was agreed to form the fact-finding committee. He presented the problem of the union. It soon became evident that the basic complaint of the union was that Immigration Service personnel were not enforcing the regulation restricting the use of commuter workers at strikebound firms. There were numerous meetings during this one day at which the union representatives fully aired their grievances. The union representatives repeatedly stated they were not asking for special treatment; they were only asking that the regulation be vigorously enforced. In essence, the union's allegations were:

1. The attitude of the Border Patrol is "provincial," anti-union, and anti-Mexican. This attitude was linked to the treatment which the union felt it had received at the hands of INS supervisory field staff. The union reported several instances of brusque and uncooperative encounters with District Directors in San Francisco and Los Angeles and the officers in charge of the Bakersfield office. The union felt that the INS supervisors did not want to cooperate with the union in the enforcement of the regulation, and that this attitude was transmitted to the Border Patrolmen.

2. That the Border patrol favors the "growers" in the enforcement of their responsibilities. Border Patrolmen do not adequately interrogate green card workers to ascertain if they are subject to the regulation. Field checks are far to brief. Border Patrolmen are too willing to accept inadequate answers as evidence that particular individuals are not subject to the regulation.

3. That the union has additional information regarding aliens illegally in the U.S., but will not furnish it to the Service unless it could be satisfied that the Service will take action on it.

4. That violators of 8 CFR 211.1(b) are not apprehended by the INS and prevented from working in the struck fields. The only exception was 10 cases which the Union maintains were acted on by INS only after a civil suit was filed by the Union against the 10 employees and their employer.

The Union developed one general question which it presented to the INS to elicit answers on the policy and procedures for enforcing 8 CFR 211.1(b). The INS officials offered, instead, a list of 14 questions and answers, prepared by the Service for internal use at all operating levels (Attachment "A"). However, the Union would not examine it nor accept it. There was discussion of various problem situations, and ultimately the INS agreed to provide the Union with a statement about how the regulation works.

In response to Union allegations that the Service had not taken action on violations reported by the Union, the Service offered to furnish to the Union representatives the results of the investigations which have been conducted and actions taken thereon. The Supervisory Patrol Inspectors of the Bakersfield station were called in and they were subjected to examination by the Union representatives and by members of the task force.

During the examination it was apparent that the Union's allegations had merit, at least in the lack of evidence available to show that the INS had acted on complaints. The demeanor of the officers and the Union representatives made it apparent that considerable hostility and antagonism exist. From the incompleteness of information available concerning the officers' prior investigatory work it appeared that the investigations were either very superficial or the records were totally inadequate to support the conclusions made by the officers.

The Bakersfield officers explained the modus operandi used by the Border Patrol in locating and processing illegal aliens. As evidence of its good faith, the Service agreed that with respect to 38 cases in which the Union had expressed an interest and which had been referred by the Border Patrol for further investigation to determine whether there had been any violations of 8 CFR 211.1(b), the Service would furnish them on the following day with detailed information concerning actions taken and results achieved. This was done on the following day and no further question was raised by the Union with respect to these cases.

In response to the allegations made by the Union representatives that the Border Patrol of the Service was not searching for illegal aliens. INS furnished the group with a statistical account of the result of Border Patrol efforts made between February 8, 1968 and April 30, 1968. This was not acceptable to the Union officials since the results showed few persons found on struck farms who were covered by the regulation. Rather, the Union felt this supported their contention that the INS was not doing an adequate job of seeking out violators and properly interrogating suspected violators.

In support of allegations made by the Union that the Service attitude was anti-Union. Union representatives cited alleged instances of remarks made and attitudes shown by Service officers which were interpreted by them to reflect such attitudes. A typical example cited by the Union is reflected in a statement made by a person who alleges to relate an incident between Service District Director at San Francisco and one Jose Lune (Attachment "C"). It is observed at this point that at a conference held with INS officials on May 8, 1968 at San Pedro, California, the Service District Director at San Francisco denied the Union's interpretation of the incident in question, and in support thereof produced a letter which expressed appreciation by Union representatives for what is now characterized as an antagonistic attitude (Attachment "D"). However, it should be noted that the letter essentially is a polite thank you note returning $10 advanced by the District Director.

On May 7, 1968 additional meetings were held. During the morning the members of the task force actually observed and participated in Border Patrol field operations in locating and examining aliens employed on struck farms. While the members of the task force were favorably impressed by the inquiries conducted by Patrol officers during these investigations, the nature and conduct of the investigations indicated that prior investigations, and some of the current procedures, were inadequate to give meaningful protection to U.S. workers as contemplated by the regulations.

1. The questioning of suspect aliens was a time-consuming process. The brief time spent in some prior investigations observed by Union representatives, a charge not denied by the Bakersfield officers, would indicate the prior investigations were rather superficial, if the current investigations are a representative standard.

2. Of the small group questioned a significant number of suspect aliens were found. In fact, one alien who by his own statement was clearly in violation of the regulation, was found.

3. There was no effort made by the Border Patrolmen to immediately remove suspect aliens. The Border Patrol procedures call for only identifying the suspect aliens and their referring the case to other INS personnel for further, more detailed investigation. This permits the suspect alien to leave the employer or the area, only to return clandestinely, if he so chooses, at another time when he is not under scrutiny by INS officials. Unless there is an immediate investigation and removal of suspect aliens the enforcement of the regulation will continue to be a problem.

During the meetings on May 7 the same matters which had been discussed previously were reiterated. The Service representatives agreed to make any necessary changes in the procedures of the Border Patrol. The Union representative demanded that in demonstration of good faith, the group should reduce to writing the matters on which changes in procedures had been agreed to. During this discussion the Justice Department representatives declined to incorporate a commitment made the preceding day that the Service would establish a system to identify all commuters by using some sort of special identification marks on the I–151. The Justice Department representatives felt the expense of such an operation precluded the adoption at this time but that they would consider it further. Unfortunately, the failure to keep what the Union and Labor Department representatives felt was an unequivocal commitment exacerbated relations between the INS and Union representatives.

Additional tension was created when the Justice Department representatives declined to personally investigate some of the aliens cited by the Union as being in violation of the regulation. Earlier the union representatives had made an issue about turning such information over to INS because they felt thorough investigations would not be made. The Union information had been treated with some disdain by INS officials in the past who characterized investigations of their data as "wild goose chases." After being assured that their information would be carefully investigated, they changed their position about not furnishing it to INS as a good faith demonstration on their part. They were completely taken aback by the failure of the task force to make personal investigations. INS did bring officers into Delano immediately to investigate the cases, which helped ease the situation. Both the Justice and Labor Department representatives were invited by the Union to observe the network established by the Union in Delano and surrounding communities to identify suspect aliens. The Labor Department representatives joined the union representatives on such a tour the night of May 7. No investigations were made and none of the commuters were either visited or interrogated.

Notwithstanding the heightened tension at the end of the meetings, the Memorandum of Conversation finally agreed upon (Attachment "E") was accepted by the Union as an act of good faith on the part of INS.

As the meeting came to an end, it was most evident that while there remained an undertone of hostility and suspicion toward INS by the Union representatives, the climate was markedly improved over what it had been. It is believed that the Union has accepted the good faith of the Service as a result of the discussions held.

On May 8 the Immigration members of the Task Force proceeded to San Pedro, California, where a meeting of supervisory officers involved in this operation was convened.

The Labor Department representatives continued meeting with the Union representatives May 8. The Union's picketing operation was observed, its headquarters office was visited. Strike problems and Government policy were discussed at great length. On May 9 the Labor Department representatives met with members of its regional staff in San Francisco. The Delano discussions and commitments were discussed. Plans were discussed for the investigation of several farms to determine if they were still involved in the labor dispute. The extreme sensitivity of the Delano situation was emphasized and the regional staff was cautioned concerning the necessity of maintaining a fair, impartial and unbiased posture toward both sides in the dispute.

FINDINGS OF LABOR DEPARTMENT REPRESENTATIVES

1. That the issue at Delano really goes far beyond the narrow problem of the enforcement of 8 CFR 211.1(b) or even that of a dispute between a trade union and several employers. Underlying the situation at Delano is the striving of a minority group, Mexican-Americans, that has suffered odious economic, political and administrative discrimination for many years. The aspirations of this group are now centered in the Delano struggle, primarily because the Union leader, Mr. Cesar Chavez, has succeeded in projecting himself as not only a trade union leader, but as a charismatic leader of a people fighting for redress of long accumulated grievances. It is highly significant that the Union is referred to as "la causa," that the folk hero of the members is Emilio Zapato, that its patron is the Virgin of Guadalupe. All are symbolic of the struggles of an oppressed people. Unless the Delano issue is recognized for what it is, an integral part of the present civil rights struggle in America, measures to solve the particular issues investigated by the Task Force are likely to be ineffectual.

2. That there is considerable distrust and resentment by the United Farm Workers Organizing Committee, and probably shared by the Mexican-American community, of Government agencies and employees arising both as a survival of past feelings and as a result of current attitudes and practices.

3. That Mexican alien immigrants with homes in Mexico have been, and are now, employed on farms involved in the labor dispute despite the promulgation of 8 CFR 211.1(b). This arises because of insufficient enforcement techniques, but, more importantly, because the regulations do not provide meaningful protection to U.S. workers. In essence, U.S. workers are looking to the regulation to provide more of a safeguard of U.S. wages and working conditions than it can give. Enforcement measures are considered very inadequate and the Government attitude toward the workers' plight viewed as a deceitful sham simply because the regulation is not preventing commuters from working as strike breakers.

RECOMMENDATIONS OF LABOR DEPARTMENT REPRESENTATIVES

1. That the commitments made by the task force be honored. Specifically this means implementing the Memorandum of Conversation (Attachment "E") and furnishing the United Farm Workers Organizing Committee with a response to its questions to the task force.

2. That INS undertake a systematic program of identifying all commuters, seasonal or daily, to facilitate the identification of aliens possibly subject to 8 CFR 211.1(b). To assist in this the Labor Department will make staff help available to INS. Once this identification is completed, only holders of this card could cross the border. The ordinary green card holder would be required to have a re-entry permit.

3. That the enforcement techniques of INS be changed. Aliens suspected of being in violation of 8 CFR 211.1(b) should be removed from the farms in question as soon as grounds for such a suspicion are found. The INS investigatory staff stationed in Delano should be increased; this includes both Border Patrol and INS staff. Union allegations concerning aliens employed in violation of 8 CFR 211.1(b) should be investigated promptly and complete written reports of the investigations made promptly to the Union. That INS station in Delano an employee of Mexican-American ancestry, in whom the Union has confidence, to work with the Union, as a liaison officer.

4. That the Government agencies involved immediately conduct extensive employee training to eradicate any attitudes of bias or prejudice against

Mexican-American farm workers; that if such attitudes cannot be changed, the employees involved be transferred to jobs involving no work responsibilities with Mexican-Americans.

5. That 8 CFR 211.1(b) be amended to preclude the employment with a strikebound firm of any alien immigrant who maintains a residence outside of the United States. This would eliminate the vexing enforcement problem existing under the present regulation of determining the date of an alien's employment at such a firm and the date and purpose of his entry into the United States.

6. That a regulation be promulgated that would condition any alien's commuter status upon a periodic determination by the Secretary of Labor that his employment in the United States does not adversely affect the wages and working conditions of U.S. workers.

The recommendations of the Labor Department Task Force members admittedly go beyond the Delano strike. But, as stated earlier, the issue itself involves more than the Delano strike. At issue is the relation of the Government, and specifically this administration, toward a minority group that in an era of social revolution is asking redress for accumulated grievances. The action of the Government in the Delano strike, the commuter regulation barring employment of commuter strikebreakers, and its enforcement (or lack of enforcement) is alienating the Mexican-American community from the administration. This will worsen until there is an effective resolution of the whole commuter problem. Unless far-reaching administrative action is taken, and taken soon, there is a real and immediate danger that a solution will be sought in the streets with grave national and international repercussions.

FRANK BORDA.
KENNETH ROBERTSON.
LAWRENCE W. ROGERS.
ROBERTO ORNALES.

ATTACHMENT A

1. Q. An alien previously admitted as an immigrant who maintains a home and family in Mexico commutes daily to and from work in the United States. In May he moves farther north and discontinues returning home each night. After several weeks of varied employment, he secures work at a place where the Secretary of Labor has already determined a labor dispute exists. After a short term of employment, he returns to Mexico to visit his family. Two weeks later he applies for readmission to continue his employment at the place where the dispute exists. Is his Form I-151 valid for reentry?

A. No. His primary purpose is to be employed at the place where the dispute exists and his employment there commenced after the determination of a labor dispute was made.

2. Q. An alien previously admitted as an immigrant who has no residence in the United States and does maintain a residence in Mexico is working close to the border and returning home every week or two to visit his family. The Secretary of Labor determines a labor dispute exists at the alien's place of continuous employment. The determination is made subsequent to commencement of the alien's employment. The alien visits his family for a few days and applies for readmission. Is his Form I-151 valid for reentry?

A. Yes. The alien's employment was continuous since prior to the Secretary of Labor's determination.

3. Q. An alien previously admitted as an immigrant is employed at a place prior to the time the Secretary of Labor determines a dispute exists. Due to seasonal work, the alien is temporarily "laid off." He returns to his home in Mexico and accepts employment there. A few weeks later he applies for readmission to continue his work with his former employer. Is his I-151 valid for reentry?

A. No. We consider the continuity of his employment broken.

4. Q. A legal resident alien who maintains his home and family in the United States accepts employment at a place where the Secretary of Labor has determined a labor dispute exists. He makes a visit outside the United States. Is his Form I-151 valid for reentry?

A. Yes—since his primary purpose in seeking reentry is to resume residence.

5. Q. An alien previously admitted as an immigrant but now domiciled in Mexico attempts reentry for the purpose of seeking work. He has made no arrangement for employment and has no particular place in mind. There are sev-

eral places in the area where labor disputes have been determined and announced by the Secretary of Labor. The applicant is warned that seeking work where a labor dispute exists will invalidate his Form I–151 for admission. He is subsequently found employed at a place where a determined and announced dispute exists. Is he deportable? Is he excludable at next entry?

A. On the basis of the facts presented the alien would be deportable under section 241(a)(1) in that he was excludable at time of entry as his Form I–151 was invalid as a document in lieu of a visa or permit to reenter. Absent a waiver or new immigrant visa he would be excludable at his next attempted entry.

6. Q. An alien who was initially admitted as an immigrant in 1956 works each year in northern California for the same employer from March to September, then follows the harvests until December. He spends December, January and February in Mexico. His wife and children, who were also admitted as immigrants, accompany him. He has no fixed place of residence in the United States and usually he lives in housing furnished by the employer. During the period the alien was in Mexico (December through February) the Secretary of Labor determined and announced a labor dispute at the alien's regular place of employment. In March the alien applies for admission destined to the place where the dispute exists. Is his Form I–151 valid?

A. We now have several factors to consider. Was his employment continuous since before the dispute determination? Apparently not as he usually leaves that employer and follows the harvests in the United States from October through December. Is he seeking admission *primarily* to accept employment at the place where the dispute exists? Because of his habits there is indication the *primary* purpose is to resume residence. This would have to be decided by the facts in the case.

7. Q. An alien previously admitted as an immigrant and now domiciled in Mexico last entered the United States after the effective date of the amended regulation (July 10, 1967) at which time he was destined to an employer where no dispute existed. He later accepted employment at a place where a dispute had been determined. Is he deportable?

A. If an alien entered the United States after the announcement of the labor dispute and went to work, even though intervening employment, he is presumed to be in violation of the regulation. Facts should be developed.

8. Q. Is the Form I–151 of the alien described in the last question valid if he goes to Mexico and seeks reentry?

A. No. His employment commenced at the place where the dispute exists subsequent to the determination.

9. Q. An alien and his entire family have been admitted for permanent residence. They work as migrant agricultural workers and follow the harvest nine or ten months each year. In December they establish residence in a border city in Mexico and the principal alien commutes daily to work near the border. His children commute daily to school. He accepts employment at a place where a labor dispute has been determined. Is his Form I–151 valid for entry?

A. No. His primary purpose in seeking admission is to work at the place where the dispute exists.

10. Q. An alien previously admitted as an immigrant commutes daily from Mexico. He is employed in agricultural work but has no definite employer. He is picked up each morning by a labor contractor and does not know exactly where he will be employed. He is paid daily by the contractor. He enters the United States using his Form I–151 in lieu of a visa and is found that afternoon employed by the labor contractor on a farm where a labor dispute has been determined. Is he deportable?

A. Yes. We believe employment by a labor contractor at a place where a dispute exists to be equivalent to employment by the owner or operator. This rule should also be applied concerning continuity of employment if the employment continues at the same place. However, continuous employment by a labor contractor who places an alien at a place after a dispute is determined shall not exempt the alien from provisions of the regulation.

11. Q. An alien formerly admitted as an immigrant and who maintains no domicile in the United States last entered the United States in 1966 and worked for a labor contractor starting in May 1967. The contractor, who paid the alien's salary, continuously employed the alien on a specific farm. A labor dispute was determined on that farm in July 1967. The alien, although continuing in the same actual employment, was in August 1967, placed on the payroll of the farm where the dispute existed. In September he went to Mexico to visit his family and ap-

plied for readmission in October to continue his employment. Is his Form I–151 valid for reentry?

A. Yes. The regulation bars employment at a specified place whether the alien receives his pay from a labor contractor or from the owner or operator. This point is also covered in question and answer No. 10. Therefore if an alien has worked continuously at a place where a labor dispute exists since a date prior to the Secretary of Labor announcement, the fact that he was subsequently changed from a labor contractor's payroll to the owner's or operator's payroll would not be material.

12. Q. Given the same set of circumstances except the alien continued employment with the labor contractor rather than transferring to the payroll of the disputed place. Is his Form I–151 valid for reentry?

A. Yes. We would consider his employment continuous and it was accepted prior to the effective date of the regulation and the determination.

13. Q. An alien previously admitted as an immigrant who maintains no residence in the United States entered the United States seeking employment. He accepted employmentat a place where, a few days later, the Secretary of Labor determined and announced a labor dispute. What action is needed?

A. Even if employment commenced prior to the determination he will be considered in violation if we are satisfied the employment was actually entered into in anticipation of the labor dispute.

14. Q. The Secretary of Labor, on January 2, determined and announced a labor dispute at employer A. An alien previously admitted as an immigrant who maintains his residence in Mexico enters the United States on January 5 destined to employer B, where no dispute exists, and accepts employment there. On January 6 he leaves employer B and accepts employment with employer A. What action, if any, is indicated?

A. He is considered in violation of the regulation in that his actions indicate an intent to circumvent the regulation.

ATTACHMENT C

STATEMENT OF JOANNE EDELSON, HOLLISTER, CALIF.

Mr. Luna then mentioned the incident where Immigration officials went to see Cesar and inspect his green card, calling this very insulting. Mr. Fullilove explained that the officials "did not go to see Cesar", but that Cesar was parked in a car alongside the field where they were checking. They asked to see his green card as part of their routine check of all Mexicans. He says Cesar refused to show it or even simply state he was Cesar Chavez—a behavior Fullilove labeled as "very uncooperative". He explained that Immigration sometimes has a hard time distinguishing between Mexicans and Mexican-Americans, and that they constantly had to be on the look-out for wetbacks.

Then we started to talk about the quotation Willard Wirtz and Ramsey Clark made last summer to the effect that no green carders shall work behind a picketline. Of Mr. Wirtz he said, "Mr. Wirtz is not in my department—he is in the Department of Labor, and Immigration is the Department of Justice." Of Mr. Clark he said, "Ramsey Clark is in Washington—must not know that there are two classes of people with green-cards: resident aliens and commuters. We cannot enforce that law as he stated in the press". He then made the comment (paraphrased). "Don't listen to the journalists, don't listen to the politicians—Mr. Willard Wirtz and Mr. Ramsey Clark are politicians. They are not the ones to be sued if they should apply the law against the resident aliens. I am the one who will be sued". He said they shouldn't have made their statements because they can't be carried out on the local level.

Then he went into a long thing about all the problems Immigration has with wet-backs, and people who slip into Florida illegally from the West Indies.

We asked how many men were assigned to the job of making sure Commuters weren't scabbing. He was very evasive on this, saying only that he would send in as many men as needed to do the job. He then said, "if your Union has positive proof that "commuters", not resident aliens are in Giumarra's fields, and you can furnish a list of names and addresses, then call the border patrol. If they don't act immediately, then you call me and I PERSONALLY will make sure they are thrown out." (He said this about three times).

ATTACHMENT E MEMORANDUM

(A memorandum of conversation between a task force composed of representatives of the Departments of Justice and Labor, and representatives of the United Farm Workers Organizing Committee, AFL–CIO, at Delano, Calif., on May 7, 1968)

1. The Immigration Service will investigate every alien found at certified struck plant.

2. Service will suggest that violators of strikebreaker regulation leave the struck employment. If they fail to do so, proceedings will be brought against violators who refuse.

3. Union will furnish to Service any information as to violations and Service will inform Union as to results of such investigations.

4. Service will make every effort to eliminate any provincial attitudes and Union will cooperate with Service in performing its enforcement responsibility.

5. Service will furnish a further statement to Union to clarify scope of strikebreaker regulation.

6. For Greencard holders covered by strikebreaker regulation, the latest date of entry is the one to be considered.

In the Court of Appeal of the State of California in and for the Third Appellate District [Sacramento]

(3 Civ. 12547)

ALBERTO DIAZ AND EPITACIO RIOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS AND APPELLANTS

v.

KAY-DIX RANCH, ET AL., DEFENDANTS AND RESPONDENTS

Filed July 14, 1970

Plaintiffs bring this class action on behalf of themselves and other migratory workers customarily employed on farms and ranches in the Sacramento valley. They sue the owner-operators of three separate ranches. In essence the amended complaint alleges that defendants, as a common practice, knowingly employ Mexican nationals who have entered the United States in violation of the federal immigration laws; that these illegal entrants[1] accept work under inferior conditions and unlawfully compete with domestic farmworkers for the the available supply of agricultural employment; that plaintiffs and their class are largely dependent upon seasonal earnings; that defendants' unlawful practice of hiring illegal entrants denies plaintiffs and their class work opportunities which would otherwise be available, increases the rate of unemployment and depresses the earnings of Northern California farmworkers; that the hiring of illegal entrants cost Northern California farmworkers approximately $2,700,000 in lost wages in 1969 and costs the public increased annual welfare expenditures of not less than $1,400,000 for the support of domestic farmworkers and their families. Plaintiffs seek an injunction prohibiting defendants from knowingly employing illegal entrants.

The trial court sustained defendants' demurrer without leave to amend, concluding that the complaint failed to state a claim for relief and that the court lacked jurisdiction of the subject matter. Plaintiffs appeal from the judgment of dismissal.

Defendants' demurrers admitted the truth of the complaint's material allegations of fact; plaintiffs' ability to prove these allegations is of no concern to the reviewing court; plaintiffs need only plead facts showing entitlement to some relief. (Alcorn v. Anbro Engineering, Inc. (1970) 2 Cal.3d 493, 496.) Thus, the allegation that defendants knowingly hire illegal Mexican entrants is admitted for the purpose of this appeal. At oral argument plaintiffs conceded that a prohibitory injunction, restraining agricultural employers from knowingly hiring illegal entrants, would have little, if any, practical value; that, if the judgment is reversed, plaintiffs would seek an injunction with at least minimal mandatory features, requiring defendants to make some reasonable inquiry into the citizenship or immigration status of employment applicants as a preliminary to hiring.

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[1] In common parlance, Mexican nationals who enter the United States illegally are called *wetbacks* or *alambristas*. The term *wetback* originated in the circumstance that many swim or wade across the Rio Grande River to enter the United States. The term *alambrista* literally means tight-rope walker, although it also conveys the notion of fence jumper. (See Park, *Illegal Entrants: The Wetback Problem in American Farm Labor,* 2 Univ. of Cal. Davis L. Rev. p. 55 (1970).)

Plaintiffs justify their claim to equitable relief on the theory that defendant's actions constitute a species of unlawful or unfair business practice within the unfair competition provisions of section 3369 of the California Civil Code.[2] An alternate rationale stems from the doctrine that the right to pursue a lawful occupation is protected in some degree against arbitrary action by private persons or organizations, including labor unions and employers. (James v. Marinship Corp. (1944) 25 Cal.2d 721, 731–734; Bautista v. Jones (1944) 25 Cal.2d 746, 749). The extent of protection is described in Willis v. Santa Ana Community Hosp. Assn. (1962) 58 Cal.2d 806, 810: "There is an established principle at common law that an action will lie where the right to pursue a lawful business, calling, trade, or occupation is intentionally interfered with either by unlawful means or by means otherwise lawful when there is a lack of sufficient justification. [Citations.] Whether there is justification is determined not by applying precise standards but by balancing, in the light of all the circumstances, the respective importance to society and the parties of protecting the activities interfered with on the one hand and permitting the interference on the other. [Citations.]"[3]

The claim of wrongful interference with livelihood would proceed upon the hypothesis that defendants' deliberate activities—conceded for the purpose of this appeal—are tortious, because they violate the policy of the federal Immigration and Nationality Act, depriving plaintiffs and other farm workers of the act's intended shield against job competition by alien workers; hence, that plaintiffs have redress through a civil remedy.[4]

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[2] Civil Code section 3369 declares in part:

"1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

"2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

"3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent bsiness practice . . . .

"4. . . . .

"5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney . . . or by any person acting for the interests of itself, its members or the general public."

It has been suggested that the notion of an "unlawful" business practice may include violations of statutory standards fixing working conditions for agricultural labor. (19 Hastings L.J. 398, 407–411 (1968).)

[3] The common law principle described in Willis v. Santa Ana Community Hosp. Assn., supra, also receives recognition in equity. (New Method Laundry Co. v. MacCann (1916) 174 Cal. 26, 31.) The formulation of the California Supreme Court in the Santa Ana Hospital case is comparable to the prima facie tort doctrine accepted in a number of American jurisdictions, although California decisions have never utilized the terminology of that doctrine. The prima facie tort doctrine is epitomized by Justice Holmes' declaration in Aikens v. Wisconsin (1904) 195 U.S. 194, 204: "[P]rima facie, the intentional infliction of temporal damage is a cause of action, whch, as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape." (See Comment Note, Prima Facie Tort, 16 A.L.R. 3d 1191; Brown, *The Rise and Threatened Demise of the Prima Facie Tort Principle,* 54 N.W. Univ. L. Rev. 563 (1959).)

The prima facie tort doctrine received its first American recognition in Holmes' famous dissent in Vegelahn v. Guntner (1896) 167 Mass. 92, 106 [44 N.E. 1077, 1081], in which the jurist viewed the competitive struggle between capital and labor as social justification which excused otherwise tortious concerted activity by labor. The identical species of competition has been recognized in California as social justification for concerted activities. (McKay v. Retail Auto. S.L. Union No. 1067 (1940) 16 Cal. 2d 311, 326; see also Frankfurter and Greene, The Labor Injunction. pp. 24–25 (1930).) At this point the conceptual kinship between a tortious denial of employment opportunities and the statutory notions of unfair competition and unlawful business practice (Civ. Code, § 3369) becomes apparent.

In relation to an allegedly wrongful refusal to enter into an employment relationship, actionability usually depends upon concerted activities by several defendants. (Rest. Torts 765.) Conceivably, recovery might also rest upon a duty arising from a statutory enactment. (Rest. Torts 762.) In this case the duty, although judicially declared. would have a statutory basis in the policy of the Immigration and Nationality Act to protect the employment opportunities of the domestic labor force. (See fn. 4, infra.)

In determining the availability of injunctive relief, the court must consider the interests of third persons and of the general public. (Loma Portal Civic Club v. American Airlines, Inc. (1964) 61 Cal. 2d 582, 588.) Consideration of redress against a tortious interference with livelihood requires a similar balancing of competing social and individual interests. (Willis v. Santa Ana Community Hosp. Assn., supra.) Thus, whatever the legal theory underlying the injunction, the court must compare the effects of granting and withholding it and, in that connection, consider the comparative availability and advisability of other forms of amelioration.

Circumstances within the ambit of judicial notice provide a background for equity's evaluation of plaintiffs' suit for equitable relief. Congress possesses the exclusive power to regulate immigration. The Immigration and Nationality Act of 1952 as amended (8 U.S.C. § 1101 et seq.) establishes comprehensive controls over the admission of foreign workers as immigrants. As pointed out in Purdy & Fitzpatrick v. State of California (1969) 71 A.C. 587, 596, these controls reflect a congressional intent to protect the American labor market from an influx of foreign labor. (See also Karnuth v. United States (1929) 279 U.S. 231, 243–244.) Plaintiffs and the class on whose behalf they sue—the citizens and lawfully admitted aliens who constitute the California supply of farm labor—are at least the theoretical beneficiaries of this congressional policy.

Since World War II many thousands of Mexican nationals have been drawn to the farm labor markets of the southwestern United States. Some have been lawful participants, others, present in violation of the immigration law, illegal participants. Until 1964 the *braceros* represented one kind of lawful participant. Public Law 78, enacted by Congress in 1951 (65 Stat. 119 [7 U.S.C. § 1461 et. seq.]) permitted the importation of these contract farm laborers whenever the Secretary of Labor determined that sufficient domestic workers were not available. Dissatisfaction with the *bracero* program led Congress to permit its expiration in 1964. (Public Law 88–203 [77 Stat. 363]; see 14 Stan. L. Rev. 120 (1961).)

The "green card commuters" represent another group with a measure of legal sanction. These are Mexican nationals admitted to the United States under immigration visas. Theoretically they are "domiciled" in the United States. Since resident aliens may lawfully leave the United States for temporary visits, the commuters actually live on the Mexican side of the border and cross into the United States daily or seasonably for work. At the time of his original entry the commuter, like other immigrants, receives an alien registration receipt card or "green card." The commuters' legal status and their impact on domestic farm labor forces are discussed in some detail in 21 Stan. L. Rev. 1750 (1969).[5]

The illegal entrant or wetback represents a considerably force in the farm labor market. These job seekers cross the border illegally or, having been admitted as temporary visitors, overstay their admission. Because a large number of domestic farm laborers are of Mexican ancestry, the illegal entrants are able to blend into the local labor force. Although the border patrol of the federal Immigration and Naturalization Service apprehends large numbers, the magnitude of the illegal traffic cannot be accurately measured because so many enter and leave without apprehension. As early as 1951 a presidential commission labeled the illegal traffic "virtually an invasion." (Report of the President's Commission on Migratory Labor (1951) p. 69.) More recently, the Senate Subcommittee on Migratory Labor declared: "Wetback magnitudes are virtually impossible to measure accurately. They must be found and deported in order to be counted in the Immigration Service totals. Undoubtedly, there are many entering and exiting across borders who are never apprehended and counted." (*Loc. cit.*, fn. 5, p. 63; see also, *Wetbacks—A Life of Fear*, Times-Post Service (San Francisco-Chronicle-Examiner, July 5, 1970, p. 4 of Chronicle Sunday Punch).)

According to the annual reports of the Immigration and Naturalization Service, its officers located 89,751 deportable Mexican nationals in the fiscal year 1966; 108,327 in fiscal 1967; 151,705 in 1968; 201,636 in 1969. Of the deportable Mexican nationals apprehended in 1969, 53,684 were found employed in American agriculture. The 1969 report declares: "Throughout the year, there was a mounting influx of aliens illegally seeking employment, however brief, menial, or poorly paid. In order to escape detection for as long as possible, these aliens sought to reach interior destinations by various means including public transportation, rented vehicles, cooperatively purchased cheap cars, and, in many instances, by paying exhorbitant [*sic*] fees to unscrupulous smugglers and transporters." (Annual Reports, 1967, pp. 11–12; 1968, pp. 10–11; 1969, p. 13.)

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[4] Gomez v. Florida State Employment Service (5th Cir. 1969) 417 F. 2d 569, supplies an analogy. There migratory farm workers sought relief against state officials and private agricultural employers, charging them with the violation of federally promulgated working condition standards governing employers who used federal-state employment services. The court sustained the action, holding that the federal statutes impliedly provided a civil remedy to members of the protected class. See Note, Implying Civil Remedies from Federal Regulatory Statutes, 77 Harv. L. Rev. 285 (1963).

[5] See also 1969 Report, U.S. Senate Subcommittee on Migratory Labor, Committee on Labor and Public Welfare, Report No. 91–83, 91st Cong. (1st Sess.) pp. 61–65.

A study prepared for the federal Department of Labor indicates that of the apprehended entrants, approximately one-third are repeaters. (North, *The Border Crossers*, TransCentury Corp. (1970) p. 130.) The 1969 report of the Senate Subcommittee on Migratory Labor declares that "since 1960, statistics show a steady upward trend in the volume of wetback traffic. . . ." (*Loc. cit.*, fn. 5, p. 64.)

Some notion of California's share of the illegal alien problem is gained from a statement of the Office of the Regional Commissioner, Southwest Region, Immigration and Naturalization Service, attached to one of plaintiff's briefs, declaring that the border patrol located 37,343 deportable aliens in California in 1967; 48,827 in 1968; and 69,933 in 1969.[6] Although the latter statistics are not broken down by nation of origin, the 1969 annual report of the Immigration and Naturalization Seervice has this illuminating declaration: "The illegal entries of Mexican aliens accounted for 96.7 percent of all surreptitious entries." (P. 12.)

The Immigration and Naturalization Act permits criminal prosecution, formal deportation or "voluntary departure" of illegal entrants. (8 U.S.C. §§ 1325, 1251, 1254(a).) Available sources of information indicate that the number of criminal prosecutions and formal deportations is negligible, that most illegal entrants are simply shipped back to the border as "voluntary" returnees. (See Park, *op. cit.*, 2 Univ. of Calif. Davis L. Rev., text accompanying Notes 48, 55–58.) A provision of the Immigration and Nationality Act declares it a felony wilfully or knowingly to conceal, harbor or shield illegal entrants, subject to the proviso that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." (8 U.S.C.A. § 1324(a).)

The 1951 report of the Presidential Commission described a readiness on the part of agricultural employers to hire illegal entrants and took note of the successful use of political pressure to cause the Immigration and Naturalization Service to ease up on deportations until crops had been harvested. (Report, pp. 73–76.) Relative to the impact on domestic farm labor, the commission declared: "That the wetback traffic has severely depressed farm wages is unquestionable." (*Ibid.*, p. 80.)

More recently, the 1969 report of the Senate Subcommittee on Migratory Labor declared: "The problems created by the commuter immigrant and illegal entrant are manifest. The Mexican aliens, as a group, are a readily available, low-wage work force which undermines the standards American workers generally enjoy throughout the rest of the country. More importantly, the normal play of free enterprise principles is subverted and prevented from operating to develop standards along the border commensurate with the American standard." (Report, *loc. cit.*, fn. 5, p. 64.)

A state-sponsored study found that in 1965 approximately 195,000 professional farmworkers constituted the core of the California farm labor force, although a much greater number (approximately 486,000) had annual earnings of $100 or more. Only about 40 percent of the professional farmworkers were able to find employment most of the year.[7] When the conceivable number of apprehended and unapprehended illegal entrants in California is juxtaposed against the professional farm labor force, the relative significance of the former—and their competitive impact on the latter—becomes apparent.

The social costs of the alien incursion are graphically illustrated in a brochure published by the Immigration and Naturalization Service. A heavy and systematic campaign of the border patrol in 1954 had resulted in the nationwide apprehension of approximately 1,000,000 illegal entrants. The brochure describes the abatement of social welfare and law enforcement problems following this sweep: "Early in 1955, after the rate of illegal entry had been forced down some

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[6] The court takes judicial notice of these statistics from an official governmental source. (Evid. Code, §§ 452(h), 454.)

[7] Advisory Comm. on Farm Labor Research to Assembly Committee on Agriculture, *The California Farm Labor Force: A Profile* (1969) pp. 6, 12–13, 32–33.

70 percent through an all-out enforcement effort, a survey was made to determine what effect the operation had had on these welfare and enforcement agencies. It was established that unemployment compensation claims had declined some 8 percent more than the usual seasonal declines of the two preceding years. This reduction amounted to about 8,000 claims and represented an average weekly saving of $188,000 in one State alone.

"Booking of aliens by one California sheriff's department dropped from 642 in fiscal year 1954 to 171 in 1955. Police bookings in a California city were made up to 49 percent aliens in 1953, and were reduced to less than 2 percent aliens by 1955 and 1956. Similar reductions were reported by other cities. One county hospital reported savings of $12,000 a year. Welfare payments were cut in half in another county. The number of immigration law violators committed to Federal penal institutions in the United States declined 76 percent, and a reduction of 16,500 confinement months per year was achieved." [8]

The domestic farmworkers' need for protection against the job competition of illegal entrants is undeniable, the public benefits of that protection palpable. Ever since the depression era of the thirties, the dismal plight of the American farmworker has been heavily annotated in an interminable flow of congressional hearings and reports, public surveys and social commentaries.[9] The most recent congressional examination, the 1969 report of the Senaate Subcommittee on Migratory Labor succintly described their plight as "crime in the fields." [10] Despite decades of protest and officially expressed concern, there has been no solution to the dilemma posed by agriculture's heavy, short-term need for manpower and society's inability to absorb that manpower when agriculture's need is past. From Steinbeck's Grapes of Wrath to the present, the thin gruel of public welfare handouts has been farm labor's principal progress to the remote goal of social justice.

Capture of a sizeable share of the farm employment market by invading illegal entrants is a super-imposed source of deprivation. The Immigration and Nationality Act, as we have observed, expresses a national policy to preserve the available employment market for domestic workers. Partial expropriation of the farm job market by illegal entrants represents an abject failure of national policy. Plaintiffs ascribe some part of that failure to agricultural employers who ignore the illegal status of newly arriving crop workers. In far greater measure, it must be ascribed to the self-imposed impotence of our national government. Both the Congress and agencies of the executive branch bear moral responsibility for the government's failure to protect the ill-paid and transitory job opportunities of American farmworkers from the competition of illegal entrants.

There are at least two prime areas of federal misfeasance. One is the apparent inadequacy of enforcement budgets for the border patrol of the Immigration and Naturalization Service. The informational brochure, *The Border Patrol,* declares: "The ever-present problem for supervisory officers is that of deploying patrolmen along the 8,000 miles of border so that smugglers and illegal entrants will be apprehended as near the border as possible." (P. 4.) At another point it states: "Because of the relatively small number of officers (authorized officer force is approximately 1,500), it is patently impossible to detect every violator *at entry.*" (P. 7.)

Viewed in relation to the ease with which illegal entrants melt into the general population and the large proportion who are never caught, the heavy annual increase in border patrol apprehensions is an indicator of the illegal traffic's growth, not its repression. By increasing the authorized strength of the border patrol, by demanding prosecution and sanctions for border violations, Congress could generate a national profit, a profit consisting of a reduction in social welfare and law enforcement expenditures at all levels of government, augmentation in domestic farm workers' earnings and a gain in human values.

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[8] *The Border Patrol, Its Origin And Its Work* (United States Department of Justice, Immigration and Naturalization Service M–157 (Rev. 1969) pp. 10–11.)

[9] Even a superficial documentation would extend this opinion beyond its needs. Three articles in legal journals supply a helpful array of references: 22 Maine L. Rev. 213 (1970); 2 Univ. of Calif. Davis L. Rev. 55 (1970); 14 Stan. L. Rev. 120 (1961).

[10] Report, *loc. cit.* fn. 5, page vii. At another point the subcommittee states:

"Despite their vital role in modern agriculture, particularly in filling the crucial needs at harvest time, our migrant citizens have been grossly neglected by society. More often than not, in addition to especially low living standards, the influx of migrants to supplement the local labor force creates problems in the areas of health, education, sanitation, and housing which the community is not equipped to meet.

"The statistics throughout this report indicating the low wages, unemployment, lack of education, poor housing, malnutrition, disease, and lack of adequate medical and dental care tell only part of the story of the shocking degree of impoverishment of the migrant. Migrant workers and their families have been expressly excluded, or at best only minimally included, in all conventional citizen workers benefits enacted by Federal and State law such as unemployment insurance, workmen's compensation coverage, social security insurance, general welfare assistance, minimum wage standards, child labor protections, and coverage under the National Labor Relations Act." (P. 2.)

Another federal activity has aggravated the illegal entrants' injurious impact upon American workers. For some years the Social Security Administration has been furnishing multitudes of illegal entrants with a ticket of admissibility to American jobs—a social security card. Farm employment is covered under the old age insurance provisions of the Social Security Act if the worker earns $150 or works 20 days for a single employer during the year. (42 U.S.C. § 409 (h) (2).) A crew leader, rather than the farmer, may be considered the employer for social security purposes. (42 U.S.C. § 410(n).) [11] The possession of social security cards for illegal entrants, sometimes assisted by the farmer's ability to shift responsibility for payroll deduction to fly-by-night crew leaders, has promoted the wholesale filching of employment from domestic workers. It is obvious that the aliens enter the country to get jobs and would stay home if jobs were not available. Officially oblivious to the utterly obvious, the Social Security Administration issues cards and account numbers to illegal entrants with no inquiry as to alienage or immigration status. In a continuing display of incredible insularity, one agency of the federal government puts its foot in a door which another agency is striving vainly to close.

According to the immigration laws the illegal entrants are fugitives, subject to apprehension, prosecution and deportation. If the social security agency believes itself obliged to furnish these fugitives with the insignia of employment eligibility, then the burden shifts to the Congress, which can relieve the agency of that obligation. Congress can also supply funds and authority to enforce wage deduction requirements against evading employers. Authority and budget for canceling the account numbers of apprehended wetbacks represent another possibility.

If defendants are to be enjoined, other California farm operators may be similarly enjoined. A network of these injunctions may cover growers in rural counties. A single superior court may be called upon to issue dozens of these injunctions. As this court envisions these injunctions in practical operation, farm operators or their foremen will put each new worker through a relatively simple interrogation and request for documentation. The interrogation would take place as the bus or truck unloads the day's work crew at the field entrance. Since a social security card is no token of eligibility, documentation might consist of a certified birth record, a vehicle operator's license or alien registration card.[12] Demonstrations of citizenship or lawful residence will be demanded of citizens and resident aliens. Among the illegal entrants, forgery and surreptitious transfer of papers will be common. However eligible, the worker without documentation will be suspect, since the absence of papers will permit an inference of illegal status.

The farm operator or foreman will be called upon to determine the status, legal or illegal, of each new worker.

Injunction violations would subject employers to judgments of contempt, punishable by fine or jail. (Code Civ. Proc., §§ 1212–1218.) Eligible workers or other observers would report seeming violations; contempt citations would issue and judicial hearings held. At peak employment seasons the superior courts in rural counties would sit in judgment over charges of contempt and over the form and adequacy of investigations. Multiple injunctions covering a wide segment of California agriculture would have the cumulative effect of a statutory regulation, administered by the superior courts through the medium of contempt hearings. The injunctive relief sought by plaintiffs would subject farm operators to burdensome, if bearable, regulation, and the courts to burdensome, if bearable, enforcement responsibilities.

Recognition of the domestic farmworkers' need for protection against alien competition must be accompanied by awareness of disadvantages in the proposed remedy. Weighed alone on any scale of human values, the farmworkers' need is vastly more acute than the prospective predicament of injunction-saddled employers. A third factor, the comparative efficacy of federal action, tips the scales against injunctive relief.

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[11] According to the 1965 study previously cited, crew leaders were the source of jobs for 16 percent of the Mexican workers and 12 percent of the total farm labor in California. (*The California Farm Labor Force: A Profile, op. cit.*, pp. 49, 70, fn. 7.)

[12] At this point possible restrictions on inquiry emanating from civil rights legislation are put to one sde.

The federal government could, if it would, reduce the flow of illegal entrants to a trickle or virtually dry it up. Rationalization of social security procedures would impede if not bar their access to the employment market. A paradox of this lawsuit is plaintiff's discerned need for a decree compelling inquiry by California farm operators when an agency of the federal government—supplied with an apparatus of offices, staff and computerized equipment—is unwilling or unable to conduct that inquiry. Plaintiffs seek the aid of equity because the national government has breached the commitment implied by national immigration policy. It is more orderly, more effectual, less burdensome to the affected interests, that the national government redeem its commitment. Thus the court of equity withholds its aid.

The defendants have raised a number of other contentions; that the injunction would invade the sphere of immigration regulation exclusively reserved to the federal government; that Congress has preempted the regulatory area by exempting employers from criminal liability for hiring illegal entrants without inquiry; that inquiry into a prospective employee's illegal entry violates civil rights legislation. Since injunctive relief is denied for the reasons stated, we do not pass upon these additional contentions.

Judgment affirmed.

FRIEDMAN, J.

We concur:

PIERCE, P. J.
REGAN, J.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT BUSTOS and LUPE MURQUIA, on behalf of themselves and a class of persons similarly situated but too numerous to mention; and UNITED FARM WORKERS ORGANIZING COMMITTEE, an unincorporated association,

Plaintiffs,

CRISTOBAL CARDONA, JOSE MARIA DE LA GARZA, PLACIDO RUIZ and JULIO RUIZ, on behalf of themselves and a class of persons similarly situated but too numerous to mention,

Plaintiff-Intervenors,

v.

JOHN H. MITCHELL, Attorney General of the United States; RAYMOND FARRELL, Commissioner, Immigration and Naturalization Service of the United States, and HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States,

Defendants.

Civil No. 3386-69

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure on all three claims of the complaint on the following grounds:

1. Since Mexican daily and seasonal commuters do not have residences in the United States, they are not "returning resident immigrants" (Section 211(b) of the Immigration and Naturalization Act), are not "lawfully admitted for permanent residence" or "returning from a temporary visit abroad" (Section 101(a)(27)(B)), and are not "returning to

an unrelinquished lawful permanent residence in the United States after a temporary visit abroad" (8 C.F.R. 211.1(b)(1)). They therefore cannot enter with green cards without obtaining immigrant visas and they must obtain labor certification from the Secretary of Labor under Section 212(a)(14) that they will not injure American labor.

2. Mexican daily and seasonal commuters are properly considered as non-immigrants under Section 101(a)(15)(H) of the Act since they come "temporarily to the United States to perform temporary services or labor." As such, they cannot enter the country pursuant to green cards and can enter only if they will not harm American labor.

3. 8 C.F.R. forbids persons from using green cards to enter the United States in order to work at a place where the Secretary of Labor has determined that a labor dispute exists if the employment commenced after the Secretary's determination. This regulation therefore covers all commuters. Such employment commenced after the Secretary's determination if the commuter had earlier worked for the employer but had left his employment when the agricultural work had ended and subsequently was reemployed months later.

Plaintiffs submit that no genuine issue of fact exists as to any of the three claims. Plaintiffs believe that the only critical facts have been agreed upon in the Stipulation and will not be controverted by the defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Summary Judgment was mailed, postage prepaid, this 21st day of August 1970, to attorneys for defendants and plaintiff-intervenors, addressed as follows:

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT BUSTOS and LUPE MURQUIA, et al.,

Plaintiffs,

CRISTOBAL CARDONA, et al.,

Plaintiff-Intervenors,

v.

JOHN H. MITCHELL, Attorney General of the United States, et al.,

Defendants.

Civil No. 3386-69

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT BUSTOS and LUPE MURQUIA, et al.,

Plaintiffs,

CRISTOBAL CARDONA, et al.,

Plaintiff-Intervenors,

v.

JOHN H. MITCHELL, Attorney General of the United States, *et al.*

Defendants.

Civil No. 3386-69

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Factual Background

Large numbers of Mexican nationals work as agricultural laborers in Southwestern United States, particularly California, Arizona, and Texas. These Mexican nationals originally entered the United States as immigrants in order to become permanent resident aliens. They fall into three categories:

First, some of these Mexican nationals live permanently in the United States. While such actual permanent residents of the United States may visit Mexico or other places outside of the United States, they have homes which they continue to own or rent in this country. This litigation does not affect the status of these nationals. Indeed, one of the plaintiffs, Lupe Murquia, is such a permanent resident alien who is seeking protection against the entry of the other categories of Mexican nationals.

Second, some of these Mexican nationals do not live in the United States during any period of the year. These nationals are daily commuters, who cross the border daily from homes in border areas of Mexico to work in the fields in border areas of the United States. Plaintiffs seek in this litigation to prevent the continued entry of these agricultural workers.

Third, some of the Mexican nationals are seasonal workers who come to the United States for a number of months--usually four to six--during the agricultural season each year. These seasonal commuters return after the agricultural season to their permanent homes in Mexico which they own or rent or where they stay with friends or relatives. They may come to a single place of employment in the United States or move from one American employer to another during the agricultural season. They may return to the same place or places of employment each year or work wherever an opportunity happens to arise. They may leave some personal belongings with an American employer or at some other place in the United States when they return to Mexico. Plaintiffs also seek to prevent the entry of this third category of Mexican nationals as agricultural workers.

In short, this suit involves Mexican farm workers who entered the United States to become permanent resident aliens but who have in fact no permanent residence in the United States. There are undoubtedly situations where it is difficult to ascertain whether the permanent, continuing residences of these Mexican nationals are in the United States or Mexico since these aliens spend part of the year in each of the two countries. However, plaintiffs submit, as we will argue more fully below, that the determining principle is whether the aliens retain a dwelling place, which they own or rent, in the United States when they go to Mexico. If they do retain such a continuing dwelling place, plaintiffs are prepared to concede that these aliens are in fact permanent residents of the United States whether or not they also own or rent residences in Mexico.

Extremely large numbers of Mexican nationals enter the United States daily as seasonal commuters. A count made by the Immigration and Naturalization Service on January 31, 1970, indicated that 50,202 daily commuters crossed the Mexican border to work in industrial and agricultural employment on that day alone. Immigration and Naturalization Responses to the Senate Subcommittee on Migratory Labor [hereinafter INS Responses], p. 3-1 (1970). It is likely that between a third and a half of these commuters worked in agricultural employment even though this was not during the agricultural season.[1] If a similar survey were conducted during the harvest season, the number of commuters and the percentage employed as agricultural workers would be greatly increased. Commuters constitute at least 85 percent of the seasonal agricultural work force in Imperial and San Diego counties in California. Department of Labor, "The 'Commuter Problem' and Low Wages and Unemployment in American Cities on the Mexican Border," in Report of the Select Commission on Western Hemisphere Immigration, p. 126 (1968).

Studies made by the Department of Labor show that daily commuters have a serious impact on domestic labor. The commuter alien lives in Mexico where living standards and costs are much lower than in this country. Thus, he is able to accept, and does accept, less pay than American residents. The result is that wages are invariably lower and unemployment greater in border areas where commuters work than elsewhere. In both California and Texas, agricultural wages are lowest in border areas and highest in areas farthest removed from the border. Id. at 116, 127. Unemployment in Texas border towns is 95 percent higher than areas in the interior and in California unemployment in the Imperial Valley is twice the state's average. Id. at 128. "The fact that unemployment is heavy and wage rates are low in the border towns is not coincidental: Workers residing in Mexico contribute to the labor surplus by filling jobs that United States residents would otherwise have and frequently take them at wage rates unacceptable to United States residents." Id. at 123; see North, "The Border Crossers: People Who Live in Mexico and Work in the United States," prepared for the Manpower Administration, Department of Labor, p. 143 (April 1970). The Labor Department has found that the commuter alien further reduces the real income of United States residents by sharing in the enjoyment but not the costs of many public services in the United States such as public highways, police protection services, shopping facilities, schools, health, welfare, manpower and poverty programs. Department of Labor, "The 'Commuter Problem' and Low Wages and Unemployment in American Cities on the Mexican Border," in Report of the Select Commission on Western Hemisphere Immigration, p. 113; North, "Border Crossers," supra, pp. 185-186, 192, 196.

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[1] An earlier survey made by the Immigration and Naturalization Service on January 17, 1966, found that 44,000 alien commuters crossed the border that day. Ninety-five percent came to eight border areas--El Paso, Laredo, Brownsville, and Eagle Pass, Texas; Nogales and San Luis, Arizona; Calexico and San Isidro, California. Over 17,000 of these commuters worked in agricultural employment. Cong. Rec., March 4, 1970, S. 2945.

A recent study of the commuter practice prepared for the Department of Labor by David North, the former Executive Director of the cabinet-level Inter-Agency Committee on Mexican-American Affairs, found that the availability of commuter labor in an already surplus labor market has pushed many United States residents into migratory farm labor. North, "The Border Crossers," supra, p. 178. The counties with the largest number of migrants (such as Imperial in California and Yuma in Arizona) import the most commuters. Id. at 175.

Most of the data concerning the commuter practice concerns daily commuters and the border areas where they work. This results from the difficulty in identifying the seasonal commuter under the Immigration Service's present methods of administering the commuter program on the Mexican border. Several years ago, in response to pressure from Congressional committees, the Immigration Service began to tag entrance cards of daily commuters with metal grommets. Hearings on Employment of "Green Card" Aliens During Labor Disputes before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 69 (1969). Although this procedure depended upon the memories of border officials and probably missed many commuters, it did serve as a basis for identification and study of the daily commuter problem. Unfortunately, there is no similar method for identifying seasonal commuters on the Mexican border. There is nothing about his identification card to distinguish him from a bona fide permanent resident alien. Only within the last year in response to prodding by various Congressional committees has the Immigration Service even started trying to determine the numbers and length of stay of seasonal workers. Id. at 70.

As a result, there are no exact figures even on the number of seasonal commuters who enter the United States. However, it is estimated that from 100,000 to 400,000 work in the fields in the United States each year. Cong. Rec., March 4, 1970, S. 2950.[1/] There is no doubt, however, that the seasonal commuter has a serious adverse impact on American labor. The seasonal commuter contributes to low wages and working conditions. Like the daily commuter, he can work for lower wages because he spends much of the year living as part of the low-cost economy of Mexico. Fineberg, "Green Card Labor and the Delano Grape Strike: A Study of Post-Bracero Mexican National Farm Workers in the San Joaquin Valley" in Hearings on Employment of "Green Card" Aliens During Labor Disputes, supra, p. 13. Senator Muskie has stated on the floor of the Senate that it is a known fact that "the presence of these workers [seasonal commuters] has an adverse economic and social effect on American labor." Cong. Rec., March 4, 1970, S. 2942.

The admission of both daily and seasonal commuters also discourages unionization. Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness;

[1/] Charles Gordon, the General Counsel of the Immigration and Naturalization Service, refers to "a large influx of seasonal workers." Gordon, "The Amiable Fiction Alien Commuters Under Our Immigration Laws," in Hearings on Employment of "Green Card" Aliens During Labor Disputes, supra, p. 183.

Part 5: Border Commuter Farm Labor Problem before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 7, 45, 55 (1969). The plaintiff Farm Workers Organizing Committee has sought to organize farm labor into a strong union capable of representing the heretofore unrepresented interests of farm workers. Its efforts have been jeopardized by the large numbers of commuter aliens who are ready to take the place of union members on strike. Commuters themselves are difficult to organize because they can survive in the lower-cost Mexican economy on wages which are unacceptable to American workers. Fineberg, supra, p. 13 (1969). See also Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness; Part 5, supra, p. 55.

The Labor Department, which recently conducted a study of the Delano labor dispute, concluded that seasonal commuters are being employed there as strike breakers. Cong. Rec., March 4, 1970, S. 2942, 2953. The Immigration Service itself has admitted that the seasonal commuter is even more of a threat to domestic agricultural labor than the traditional daily commuter. James Hennessy, Executive Assistant to the Commissioner of the Immigration and Naturalization Service, testified at a Senate hearing that it is the seasonal commuter who is the chief impediment to unionization of agricultural labor in California

(Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 52 (1967)):

> "[T]hose [seasonal workers] who come in late March or April and have gone along with the harvesting of the crop across the Southwest and up North. It probably is there that you are going to find the commuters who are causing the unions so much trouble in California today."

In conclusion, studies of the impact of the commuter practice have invariably shown that the practice deprives American workers of jobs, lowers their wages and working conditions, drives many American workers into the migratory labor stream, and interferes with the organization and representation of a depressed sector of American labor.

History of the Commuter Practice

Prior to 1921, Mexican nationals freely entered the United States to work. Although the Immigration and Nationality Act of 1917 prohibited the admission of alien contract labor to the United States, an exception was made for Mexican laborers. Act of February 5, 1917, Sec. 3, 39 Stat. 875. Their entry was further facilitated by Section 23 of the Act which directed the Commissioner of Immigration not to delay ordinary travel across our borders. 39 Stat. 892. Ease of entry at our Southern border, however, was dramatically ended by the temporary Immigration Act of 1921.

The 1921 Act placed numerical limitations on immigration to the United States for the first time. The numerical limitations, however, did not apply to persons born in the Western Hemisphere and to aliens who had been in Western Hemisphere countries such as Canada or Mexico for at least one year prior to immigration to the United States (Act of May 19, 1921, 42 Stat. 5, Sec. 2(a)(7), a period later raised to five years in 1922 (Act of May 11, 1922, 42 Stat. 540, Sec. 2). The temporary legislation of 1921 was replaced by the Immigration Act of 1924 which set up a permanent system of quota allocation and control. Act of May 26, 1924, 43 Stat. 153. While the 1924 Act, like the 1921 Act, did not impose quota limitations on residents of Western Hemisphere countries, Mexican nationals were required to acquire and present entry documentation in order to cross into the United States and the border patrol was established primarily to prevent illigal entry of Mexican nationals. Study of Population and Immigration Problems, Administrative Presentations; Admission of Aliens into the United States for Temporary Employment and "Commuter Workers"; Part II: The Mexican Farm Labor Problem [hereinafter Study of Population and Immigration Problems], House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 27 (1963).

The Immigration Act of 1924 created two categories of entering aliens, immigrants and non-immigrants. Immigrants were defined as all entering aliens with the exception of certain specified entrants who were designated as non-immigrants. Among the designated non-immigrant classes were temporary visitors "for business or pleasure." Sec. 3, 43 Stat. 153. Immigration officials considered the daily commuter as a non-immigrant "temporary visitor for business" because of the temporary nature of his contact with the United States. Study of Population and Immigration Problems, supra, p. 178. See also Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges, and Issues," in Report of the Select Commission on Western Hemisphere Immigration, p. 101 (1968).

Another innovation in the 1924 Act was to require all immigrant aliens, whether quota or nonquota, to obtain visas to enter the country. Sec. 13(a), 43 Stat. 161-162.

If an immigrant alien wished to depart from the United States temporarily, he could apply for and obtain a re-entry permit which he surrendered at the border upon his return. Sec. 10, 43 Stat. 158-159.

The 1924 Act did not require documents from non-immigrants. Hearings to Clarify the Law Relating to the Temporary Admission of Aliens to the United States before the Senate Committee on Immigration, 70th Cong., 2d Sess. 42 (1929). Since the commuter alien was considered as a non-immigrant visitor for business, he was not required to possess entry documentation. The Immigration Service, however, issued a border crossing identification card to all United States citizens and aliens who frequently crossed the border in order to facilitate their entry under an old rule promulgated in 1917 which was republished without change in 1925 and 1927.[1]

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[1] The Immigration Rules of March 1, 1927, provide (Rule 3, Subdivision Q, Para. 1):

> "With a view to avoiding delays and embarrassment in cases of aliens and citizens, who residing upon either side of the line, habitually cross and recross the boundary upon legitimate pursuits, an identification card will be furnished such persons upon application to the immigration official in charge at the place of ingress and egress."

Cf. Immigration Rules of July 1, 1925, Rule 3, Subdivision R; Immigration Rules of May 1, 1917, Rule 12, Subdivision 9 and Rule 13, Subdivision 3.

In April 1927, the Immigration and Naturalization Service reversed its position concerning daily commuters and declared that they were not "temporary visitors for business" but were immigrant aliens. General Order 86, April 1, 1927, p. 1. The primary reason for the change was to prevent quota aliens from entering the United States through Canada and Mexico. Hearings To Clarify the Law Relating to the Temporary Admission of Aliens to the United States, supra, pp. 41-43. Many aliens from quota countries would come to Mexico or Canada and commute to work in the United States as non-immigrant visitors for business with a border crossing identification card. Under the new regulation, an alien laborer born in a quota country could not obtain the initial visa to enter the United States, while a Mexican or Canadian national could obtain an immigrant visa since no quota applied to those countries.

Once the Mexican or Canadian national who commuted to the United States was admitted, he was treated, as before, like a non-immigrant. Despite his new immigrant status, the Service did not require the daily commuter to take up residence in the United States. General Order 86, supra, pp. 1-2. If he complied with the immigration laws, obtained a visa, and paid a head tax, he was "considered as having entered for permanent residence." Ibid.

The Immigration Service did not require daily commuters to have immigrant visas or reentry permits even though the 1924 Act required those documents of all immigrants. It would have been a practical impossibility for the commuter immigrant to obtain the required documentation for his daily trip across the border. Despite the clear provision of the 1924 Act, the Immigration Service decided that Congress simply could not have intended to end the commuter practice. Study of Population and Immigration Problems, supra, p. 178. See also Report of the Select Commission on Western Hemisphere Immigration, p. 101 (1968). The immigration authorities therefore continued to allow the daily commuter to enter the United States with the same border crossing card he had used as a non-immigrant visitor for business without regard to the 1924 Act. General Order 86, supra, p. 2. The Immigration Service simply republished the 1917 border crossing card regulation, this time authorizing its use for the commuter immigrant. Immigration Rules of January 1, 1930, Rule 3, Subdivision Q, Para. 1. Thus, by treating the commuter alien as an immigrant for his initial entry into the United States and a non-immigrant for his subsequent reentries, Immigration officials both managed to keep quota aliens out of the country and allowed daily commuters to enter freely.

Shortly after the Immigration Service's revision of the commuter status, two alien laborers from quota countries sought admission from Canada as non-immigrant temporary visitors for business. In upholding the Service's determination that daily commuters were immigrants, the Supreme Court decided that "business" must be interpreted strictly as "intercourse of a commercial character," because of a Congressional policy of restricting immigration in order to protect American labor (Karnuth ex rel. Albro v. United States, 279 U.S. 231, 243, 244 (1929)):

> "The various acts of Congress since 1916 evidence a progressive policy of restricting immigration. The history of this legislation points clearly to the conclusion that one of its great purposes was to protect American labor against the influx of foreign labor.
>
> * * *
>
> "In view of the definite policy, it cannot be supposed that Congress intended, by admitting aliens temporarily for business, to permit their coming to labor for hire in competition with workmen, whose protection it was one of the main purposes of the legislation to secure."

Both of the plaintiffs were quota aliens. As non-immigrant visitors for business, they could freely enter and leave the United States at will. Once they were reclassified as immigrants, however, they were required to apply for an immigrant visa and come within the quota set for their country. One of the plaintiffs, for example, was born in Italy. Under the then annual immigration quota of 100 for that country, he could not have gained entry as an immigrant without an extremely long wait. Thus, the

Court's decision that temporary laborers were immigrants was consistent with the Congressional policy to protect American labor.

The Supreme Court in Karnuth did not say that commuters were immigrants because of the permanence of their contact with this country. The Court never questioned the temporary character of the commuter's contact with the United States. Commuters along with all other aliens entering this country to perform ordinary labor were designated immigrants because they did not come within any of the non-immigrant classifications in the Immigration Act of 1924. The Karnuth decision did not sanction or even consider the Immigration Service's issuance of the border crossing identification card as valid entry documentation under the Immigration Act of 1924.

In 1952, the immigration, nationality and naturalization laws were revised and codified in the Immigration and Nationality Act of 1952. Immigration Act of June 27, 1952, 66 Stat. 163. One of the purposes of the new act was to provide stronger protection for domestic American labor against competition with foreign labor. S. Rep. No. 1137, 82d Cong., 2d Sess. 11 (1952); H. Rep. No. 1365, 82d Cong., 2d Sess. 51-52 (1952).

The Immigration Act of 1952 added a new nonimmigrant category which, on its face, appears to include both daily and seasonal commuters (Sec. 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H)):

> "An alien having a residence in a foreign country which he has no intention of abandoning . . . (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country."

Another important innovation in the 1952 Immigration Act was the labor certification process of Section 212(a)(14). 66 Stat. 183. That section provided that an immigrant could not enter the United States if the Secretary of Labor certified that there were sufficient domestic workers available for the work or his entry would have an adverse impact on the wages or working conditions of domestic workers.

The Immigration Act of 1952 also tightened the language of several pre-existing provisions of immigration law having at least some relation to the commuter practice. The definition of residence (Section 101(a)(33), 8 U.S.C. 1101(a)(33)); the definition of nonquota immigrant (Section 101(a)(27), 8 U.S.C. 1101(a)(27)); the authorization of the border crossing identification card (Section 101(a)(6), 8 U.S.C. 1101(a)(6)); and the provision for waiver of the immigrant visa (Section 211(b), 8 U.S.C. 1181(b)), all were modified.

After the Immigration and Nationality Act of 1952, the Immigration Service eliminated its regulations adopted in 1930 which considered daily commuters as immigrants (Immigration Rules of January 1, 1930, Rule 3, Subdivision C, Para. 1), and removed all mention of commuters from the regulations. Cf. 17 Fed. Reg. 11483 (Dec. 19, 1952), with 8 C.F.R. 110.6 (1947 Supp.). Nevertheless, despite the changes in the statutes and regulations, the Service continued to treat the daily commuter as an immigrant and permanent resident alien. The labor certification requirement of Section 212(a)(14) was applied to the commuter only upon his initial entry into the United States. Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114, 116 (D.D.C., 1960).

The Alien Registration Receipt Card (Form I-151), commonly known as a "green card," replaced the border crossing identification card as an entry document after the Immigration and Nationality Act of 1952 was passed. In 1957 the Immigration Service restricted the use of the green card to immigrant aliens having an "unrelinquished lawful permanent residence in the United States." 22 Fed. Reg. 6377; 8 C.F.R. 221.1. Nevertheless, the Immigration Service continued to allow the daily commuter to use the green card as an entry document. Staff Report of the United States Commission on Civil Rights, "The Commuter on the United States-Mexico Border", in Hearings on Employment of "Green Card" Aliens During Labor Disputes before

Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 163 (1969).

In the 1960's, Congress took several further actions to protect American workers from competition with foreign labor. Due to the unusual farm labor shortage in the United States during World War II, the United States and Mexico had initiated the bracero program in 1943 to provide for the seasonal importation of Mexican agricultural workers. Act of August 4, 1942, 56 Stat. 1759. In 1949, when Congress renewed the bracero program in Public Law 78, it strengthened provisions in the agreement to protect domestic labor. Act of July 12, 1951, 65 Stat. 119. Growers were required to make reasonable efforts to attract domestic workers prior to certification by the Department of Labor of the need for foreign labor.

During the 1950's and early 1960's, the importation of Mexican agricultural workers under the bracero program increased markedly, reaching a peak of 450,000 in 1957. Despite the added safeguards to protect American labor, there was a growing concern in the country over the adverse impact of the program on domestic labor. Congress therefore decided in 1964 to allow the program to lapse. In the future, seasonal Mexican farm labor was to enter the United States under the provisions of the Immigration and Nationality Act providing for temporary importation of unskilled labor as non-immigrants under Section 101(a)(15)(H)(ii), when domestic labor was certified as unavailable.

8 U.S.C. 1101(a)(15)(H)(ii). See Report of the Select Commission on Western Hemisphere Immigration, p. 93 (1968). However, the Immigration Service broadened the commuter status to include seasonal workers so as to allow ex-braceros to continue to enter the country as immigrants. Hearings on Employment of "Green Card" Aliens During Labor Disputes Before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 70, 73 (1969). Thus, the old bracero program has continued but without the provisions which formerly protected American domestic labor.

In 1965, Congress amended the Immigration and Nationality Act of 1952 to provide "safeguards to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market." H. Rep. No. 745, 89th Cong., 1st Sess. 18 (1965); S. Rep. No. 748, 89th Cong., 1st Sess. 10 (1965). The most important change was to strengthen the labor certification process. Section 212(a)(14) of the Immigration Act of 1952 had proved ineffective because an alien could only be excluded if the Secretary of Labor had certified that admittance of the alien would have an adverse effect on American labor. The Secretary had no way of knowing who had applied to immigrate to the United States to take employment, or what their occupation, residence or employer would be. Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 90th Cong., 2d Sess., "Review of the Operation on the Immigration and Nationality Act as Amended by the Act of October 3, 1965," pp. 111-112 (1968). The 1965 amendments radically changed the certification procedure by reversing the burden of initiating the certification process. Under the new provision, an alien laborer cannot enter the United States unless the Secretary of Labor has certified that there are not sufficient domestic workers to perform such labor and that his employment would not adversely affect the wages of American laborers similarly employed. Section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14); H. Rep. No. 745, supra, p. 14; S. Rep. No. 748, supra, p. 15.

The 1965 amendments also changed the language of Section 211(b) which describes the category of persons to whom the Attorney General could give special permission to enter the United States without visas or reentry permits. The Immigration Service had allowed commuters to enter the United States with green cards under the 1952 Act pursuant to this Section. Under the 1965 amendments, the language was changed to allow only "returning resident aliens" to enter without immigrant visas or reentry permits. Section 211(b), 8 U.S.C. 1181(b). Nevertheless, the Immigration Service continued to allow daily and seasonal commuters to enter the United States as immigrants without immigrant visas.

In 1967, upon the strong urging of the Labor Department which was extremely concerned about the adverse effect of commuters on domestic labor, the Immigration Service issued a new regulation to prevent commuters from acting as strike-breakers. 8 C.F.R. 211.1(b). The regulation forbids use of a green card for entering the United States to work at a place where the Secretary of Labor determines that a domestic labor dispute exists. Despite the strong promise of the strike-breaking regulation, it has been almost totally emasculated by the Service. Fineberg, "Green Card Labor and the Delano Grape Strike: A Study of Post-Bracero Mexican National Farm Workers in the San Joaquin Valley," in Hearings on Employment of "Green Card" Aliens During Labor Disputes, supra, pp. 10, 14; Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness; Part 5: Border Commuter Labor Problem before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 55, 61 (1969).

In 1965, influenced by the adverse impact on the American economy and American workers of unlimited immigration from countries of the Western Hemisphere, Congress for the first time placed a quota on immigration from the Western Hemisphere, including Mexico, to take effect in 1968. Act of Oct. 3, 1965, Sec. 21(e), 79 Stat. 921. The Senate Committee stated that it had "become increasingly concerned with the unregulated flow of immigration from the nonquota countries . . . ." S. Rep. No. 748, 89th Cong., 1st Sess. 16 (1965). The amendment was designed to stem the unrestricted flow of immigration from the Western Hemisphere and to give immigrants from the Western Hemisphere an equivalent status with aliens from other parts of the world. Id. at 17-18. As a result, new commuters entering as immigrants today not only injure domestic labor but also reduce the number of scarce immigrant slots available for bona fide immigrants desiring to become residents and citizens of this country. Testimony of Richard M. Scammon, former Chairman of Select Commission on Western Hemisphere Immigration, in Hearings on Employment of "Green Card" Aliens During Labor Disputes, supra, p. 94.

The policies of the Immigration Service concerning the commuter have come in recent years under the scrutiny of the executive, legislative, and judicial branches of the government. The Department of Labor, which is concerned with the adverse effect of the commuter practice on American labor, has been especially strong in its condemnation of the commuter practice. Secretary Wirtz and other high-ranking members of the Department have testified before Congressional committees that the commuter practice contradicts the language and the intent of immigration law. Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness, Part 5, supra, pp. 45-61; Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th

Cong., 1st Sess. 12, 20, 24, 33, 34 (1967). As Secretary Wirtz described the commuter practice (id. at 12):

> "We are talking about a problem that exists only because it is covered by such a bramblebush of confusion and lack of understanding that the country does not know about [it]. We are talking about a situation that could best be described, if word would go out from this hearing session that someone has the courage to say: 'You have a cancer on your arm. You had better cut it out before it gets worse.' We are talking about a situation which affects that drastically the living conditions of millions of people in this country."

The commuter program has been repeatedly examined and denounced before and by Congressional committees. In 1963 the House Committee on Immigration and Naturalization conducted hearings on "Commuter Workers" as part of a larger Study of Population and Immigration Problems; the Senate Subcommittee on Immigration and Naturalization conducted hearings on the Alien Commuter "Green Card" System in 1967; the Select Commission on Western Hemisphere Immigration held five sets of hearings on The Impact of Commuter Aliens along the Mexican and Canadian Borders in 1968; the House Special Subcommittee on Labor of the Committee on Education and Labor held hearings in 1969 on the Employment of "Green Card" Aliens during Labor Disputes; and the Senate Subcommittee on Migratory Labor held hearings on Migrant and Seasonal Farmworker Powerlessness; Part 5: The Border Commuter Labor Problem in 1969. The unanimous reaction of these Congressional committees has been incredulity at the twisted interpretation which the Immigration Service has given immigration law in order to permit the commuter practice and indignation that the Service has ignored a Congressional mandate to protect American labor.

The first legal challenge to the commuter practice came in 1960 in Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114 (D.D.C., 1960). There the Secretary of Labor had certified to the Immigration Service, pursuant to Section 212(a)(14) that the admission of any aliens to the United States to work at the Peyton Packing Company would adversely affect American workers. The Immigration Service, however, continued to allow commuters to come to work at the plant. The District Court for the District of Columbia held that the Service's action was a "wholesale evasion" of the purpose of the labor certification provision to protect American workers from competition with foreign labor. Id. at 119. The Immigration Service has not followed the Court's interpretation of Section 212(a)(14), because "[they] do not believe it is correct." House Committee on the Judiciary, "Immigration and Nationality Act with Amendments and Notes on Related Law and Summaries of Pertinent Judicial Decisions," p. 231 (1966).

Since Amalgamated Meat Cutters, there have been two further challenges to the commuter practice. In Texas AFL-CIO v. Kennedy, 330 F.2d 217 (C.A. D.C., 1964), the

Court of Appeals for the District of Columbia dismissed an action attacking the legality of the commuter system on the ground that the plaintiffs lacked standing.[1] In Gooch v. Clark, Civil No. 49500, N.D. Cal., decided June 24, 1969, the District Court for the Southern District of California held that the plaintiffs had standing but that the commuter program was not invalid under the Immigration and Nationality Act. The case is now in appeal to the Court of Appeals for the Ninth Circuit.

In conclusion, the history of the commuter practice over its entire 50 years is one of increasing restriction by Congress as part of its general efforts to use the immigration laws to protect American labor. This attitude has been expressed both in Statutory changes and legislative hearings. The Immigration and Naturalization Service has ignored Congress and allowed the practice to continue.

1/ This court determined on March 26, 1970, that plaintiffs have standing in this case under recent decisions of the Supreme Court and the Court of Appeals for this Circuit.

Statutory and Regulatory Scheme

1. Claim I. Every alien who enters the United States is either an immigrant or non-immigrant. "Every alien shall be presumed to be an immigrant unless he establishes . . . that he is entitled to a nonimmigrant status under section 101(a)(15)" of the Immigration and Nationality Act which established ten categories of non-immigrants. 8 U.S.C. 110(a)(15).

When the commuter and seasonal workers involved in this case originally came to the United States, they claimed that they had the intention of becoming permanent resident aliens of the United States. They did not come within any of the ten specific categories of non-immigrants in Section 101(a)(15) and therefore were immigrant aliens. Defendants continue to regard them as permanent resident immigrant aliens.

Immigrant aliens generally may not enter the United States without a valid immigrant visa. Section 211(a) of the Act, 8 U.S.C. 1181(a). Such visas permit immigrant aliens to enter or reenter the United States on one occasion and expire after four months. Section 221(c) of the Immigration and Nationality Act, 8 U.S.C. 1201(c).

Under Section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), persons born in the Western Hemisphere may receive an immigrant visa only if the Secretary of Labor makes a favorable determination under Section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

Section 212(a)(14) allows such persons to receive immigrant visas "to enter the United States, for the purpose of performing skilled or unskilled labor," only if "the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that (a) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (b) employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

The Secretary of Labor has made no certification under Section 212(a)(14) of the need for additional farm labor. Instead, the Secretary of Labor has determined that such a certification cannot be made for farm laborers because the supply of domestic labor is sufficient and admission of workers would adversely affect wages and working conditions. 29 C.F.R. 60.2(a)(2); Schedule B, following 29 C.F.R. 60.6. Farm laborers are defined as workers who "plant, cultivate, and harvest farm products following instructions of supervisors often working as members of a team. Typical tasks are watering and feeding livestock, picking fruit and vegetables. . . ." As a result, immigrant aliens are not eligible to obtain immigrant visas to enter the United States in order to work as farm laborers.

The daily and seasonal commuters involved in this case do not have immigrant visas today to enter the United States. However, Section 211(b) of the Act (8 U.S.C. 1181 (b)) provides that "returning resident immigrants, defined in section 101(a)(27)(B), who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a[n] . . . immigrant visa. . . ." Section 101(a)(27)(B) of the Act (8 U.S.C. 1101(a)(27)(B)) applies to "an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad."

The Act contains two definitions relating to Sections 211(b) and 101(a)(27)(B). "Residence" is defined as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. 1101(a)(33). "Lawfully admitted for permanent residence" is defined as "the status of having been lawfully accorded the privilege of residing permanently in the United States as a immigrant in accordance with immigration law, such status not having changed." Section 101(a)(20) of the Act, 8 U.S.C. 1101(a)(20).

Pursuant to these provisions, the Immigration and Naturalization Service has issued regulations allowing "an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding one year" to present a "Form I-151, Alien Registration Receipt Card" (commonly called a "green card") rather than an immigrant visa. 8 C.F.R. 211.1(b)(1). These cards are issued when an alien registers, as every alien is required to do within 30 days of coming to the United States, under the Alien Registration Act of 1940, 8 U.S.C. 1302.

The daily and seasonal commuters involved in this case reenter the United States using such a card. They are only entitled to do so if these Mexican nationals are "returning resident immigrants" (Section 211(b)), are "lawfully admitted for permanent residence" and "returning from a temporary visit abroad" (Section 101(a)(27)(B)) and are "returning to an unrelinquished lawful permanent residence in the United States after a temporary visit abroad" (8 C.F.R. 211.1(b)(1)). The issue in Claim I is whether they come within these provisions.

2. Claim II. Two of the classes of non-immigrants in Section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) relate to this case. Section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(b)) defines as a non-immigrant, "an alien . . . having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." The regulations define "business" as "legitimate activity of a commercial or professional character" and not "purely local employment or labor for hire." 22 C.F.R. 41.22. Consequently the daily and seasonal commuters are not non-immigrants under Section 101(a)(15)(B).

Section 101(a)(15)(H) of this Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) defines, as a non-immigrant,

> "an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. . . ."

Plaintiffs contend in Claim II that the daily and seasonal commuters who enter the United States from Mexico are properly non-immigrants coming within Section 101(a)(15)(H) instead of immigrant aliens as the defendants consider them. While these Mexican nationals originally came to the United States as immigrant aliens who were admitted for permanent residence, plaintiffs contend that the Mexican nationals do not in fact now have permanent residence in the United States. Section 101(a)(33) of the Act (8 U.S.C. 1101(a)(33)) defines "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(20) of the Act (8 U.S.C. 1101(a)(20)) defines "lawfully admitted for permanent residence" as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." [Emphasis added]

If the Mexican nationals involved in this case are properly classified as non-immigrant aliens under Section 101(a)(15)(H) of the Act, they must comply with the limitation of that section that non-immigrant aliens may only enter the United States "if unemployed persons capable of performing such services or labor cannot be found in this country." Section 211(c) of the Act (8 U.S.C. 1184(c)) provides that "the question of importing any alien as a non-immigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the government, upon petition of the importing employer." Regulations of the Immigration and Naturalization Service state that (8 C.F.R. 214.1(h)(2)(ii)):

> "[A] certification from the Secretary of Labor or his designated representation stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act."

If the Secretary of Labor refuses a certification, the petitioning employer may present contrary evidence which the Service must consider in making its determination. _Ibid_. Thus, the certification process for non-immigrants under Section 101(a)(15)(H) is analogous to that for immigrants under Section 212(a)(14) described above.

The Secretary of Labor has adopted regulations governing the granting of his certification. These regulations require that a prospective employer show that he made an effort to recruit farm workers locally, has offered wages and other fringe benefits at specified levels, and has abided by state and local labor, health, and housing laws. 20 C.F.R. 602.10, 602.10a, 602.10b. Since no employer has satisfied these criteria, the Secretary of Labor has isssued no certification under Section 101(a)(15)(H) to admit aliens into the United States since 1967 for purposes of performing farm labor.

The issue in Claim II, which will be discussed below, is whether the status of the Mexican nationals involved in this case has changed because they do not have permanent residences in the United States and therefore are nonimmigrant aliens under Section 101(a)(15)(H) of the Act.

3. Claim III. The regulations of the Immigration and Naturalization Service provide that an Alien Registration Receipt Card may not be used to enter the United "when the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment" and, if the alien prior to his departure or during his temporary absence abroad, has (8 C.F.R. 211.1(b)(1)):

> "entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has determined that a labor

> dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination."

The Secretary of Labor has determined that a labor dispute exists between the plaintiff United Farm Workers Organizing Committee and 39 growers of table grapes in California. The issues in Claim III are (1) whether 8 C.F.R. 211.1(b)(1) forbids all daily and seasonal commuters without permanent continuing dwelling places and therefore residences in the United States to work at any place where the Secretary of Labor has determined a labor dispute exists when employment commenced after the Secretary of Labor made his determination and (2) whether, under 8 C.F.R. 211.1(b)(1), employment commenced after the determination when the commuter had worked for the employer during a previous agricultural season before the Secretary's determination, then left the country for several months, and then was reemployed.

I

PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON CLAIM ONE

COMMUTERS MUST HAVE AN IMMIGRANT VISA AND A LABOR CERTIFICATION FROM THE SECRETARY OF LABOR IN ORDER TO ENTER THE UNITED STATES

While we submit that most commuters are properly classifiable under the Immigration and Nationality Act as non-immigrants (see Claim II, pp. 100-116 below), defendants classify them as immigrants. We assume under Claim I that defendants are correct in classifying daily and seasonal commuters as immigrants.

Immigrant aliens may not enter the United States without a valid immigrant visa unless they are "returning resident immigrants." Section 211(b) of the Act, 8 U.S.C. 1181(b). An immigrant visa is issued for a period of four months and is surrendered upon entry. Section 221(c), (e), 8 U.S.C. 1201(c), (e). An immigrant visa may be obtained by an immigrant entering the United States to perform labor only if the Secretary of Labor has certified that there are not sufficient domestic workers to perform the labor and that his employment would not adversely affect the wages and working conditions of American domestic workers. Section 212(a)(14), 8 U.S.C. 1182(a)(14). Since the Secretary of Labor has determined that such a certification may not be made for agricultural labor (Schedule B, following 29 C.F.R.

60.6), commuters cannot obtain immigrant visas to enter the United States.

Defendants have decided, however, that both daily and seasonal commuters come within Section 211 as "returning resident immigrants" and therefore do not need immigrant visas to enter the United States. Instead, defendants allow them to enter pursuant to Alien Registration Receipt Cards, commonly known as "green cards" (Form I-151). Since defendants require no certification by the Secretary of Labor for commuters to continue to use green cards, commuters continue to enter the United States to perform agricultural labor even though the Secretary has found that entrance of immigrants to perform agricultural labor adversely affects the wages and working conditions of domestic workers.

We submit that commuters must obtain an immigrant visa in order to enter the United States and must have a labor certification from the Secretary of Labor.

A. Commuters Are Required To Obtain Immigrant Visas In Order To Enter the United States.

1. The Plain Language of the Immigration and Nationality Act and of the Regulations Require Commuters To Obtain Immigrant Visas.

As we have noted above, immigrant aliens may not enter the United States without valid immigrant visas, unless they are "returning resident immigrants." Section 211(b) of the Act, 8 U.S.C. 1181(b). The Immigration and Nationality Act defines a returning resident immigrant as an "immigrant lawfully admitted for permanent residence who is returning from a temporary visit abroad." Section 101(a)(27)(B), 8 U.S.C. 1181(b). The regulations promulgated pursuant to and interpreting Sections 211 and 101(a)(27)(B) provide that an immigrant alien may enter the United States without an immigrant visa and pursuant to a green card only if he is "returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad." 8 C.F.R. 211.1(b)(1).

It is well established that a statute is to be interpreted according to its plain and ordinary meaning. E.g., United States v. Temple, 108 U.S. 97, 99 (1881); Addison v. Holly Hill Fruit Products, 322 U.S. 607, 617-618 (1944). We submit that commuter aliens are clearly not "returning resident immigrants" of the United States; are not "lawfully admitted for permanent residence" or "returning from a temporary visit abroad"; and are not "returning to an unrelinquished lawful permanent residence in the United States."

a. The commuter is not a "returning resident immigrant" of the United States under Section 211(b) because he does not reside in this country.

The Immigration and Nationality Act specifically defines "residence" to mean (Sec. 101(a)(33), 8 U.S.C, 101(a)(33)):

> "the place of general abode; the place of general abode of a person means his principal,

> actual dwelling place in fact, without regard to intent."

It is obvious that daily commuters have no "place of general abode" in the United States since they have no "dwelling place in fact" of any kind in this country. Seasonal commuters, who have no permanent home in the United States which they retain when they are outside the country but have such a permanent home in Mexico, have their "principal, actual dwelling place in fact" in Mexico and are likewise not residents of the United States.

The Immigration Service does not contest that commuters reside in Mexico and not the United States. The Board of Immigration and Naturalization Appeals defines commuters as "persons who have their place of residence in foreign contiguous territory and commute daily to the United States to work." In the Matter of L----, 4 I. & N. 454, 455 (1951). Accord, Matter of Flores-Maldonado, 10 I. & N. 22 (1962); Matter of Bustillos-Ruiz, 10 I. & N. 60, 61-63 (1962); Immigration and Naturalization Service, Operations Instructions, Section 211.2 (Nov. 6, 1968). The Service has defined a "seasonal worker or seasonal commuter" as "an alien lawfully admitted to the United States for permanent residence, who resides in a contiguous foreign country, who comes to the United States solely to perform seasonal work for extended periods. . . ." INS Responses to the Senate Subcommittee on Migratory Labor, pp. 1-10.

Defendants have admitted in the Stipulation in this case that commuters do not live in the United States but "reside in adjacent countries." Stipulation, p. 1. By commuters, defendants mean daily commuters and at least all seasonal commuters whose stay in this country is less than six months each year. Defendants consider seasonal workers who are present in the United States for over six months each year as permanent alien residents of the United States. Hearings on Employment of "Green Card" Aliens During Labor Disputes before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 70 (1969); INS Responses, supra, pp. 1-11; 1 Gordon and Rosenfield, Immigration Law and Procedure, Section 2.19, 2.30 (1968 Supp.).

Consequently, defendants have conceded that all commuters--with the exception of seasonal commuters who live and work in the United States for more than six months each year--do not reside in the United States. This concession covers the large majority of commuters since most seasonal commuters stay in this country only for the harvest season, a period of four to six months depending on the crop. Hearings on the Impact of Commuter Aliens Along the Mexican and Canadian Borders before the Select Commission on Western Hemisphere Immigration, Part II, pp. 8-9 (1968). None of these commuters are "returning resident immigrants" who can enter this country without immigrant visas.

Furthermore, the position of the Immigration and Naturalization Service in equating mere physical presence over six months with residence in this country is without statutory or logical basis. The definition of residence received its present form in the Immigration and Nationality Act of 1952. Section 101(a)(33), 8 U.S.C. 1101(a)(33). Prior to the 1952 Act, the Nationality Act of 1940 provided that "the place of general abode shall be deemed the place of residence." Section 104. The 1952 Act tightened this definition by detailing "the place of general abode" as a person's "principal, actual dwelling place in fact, without regard to intent." The House Report accompanying H.R. 5678, which became the Immigration Act of 1952, stated that the definition of residence adopted by the 1952 Act was a codification of the construction of the term "residence" in Savorgnan v. United States, 338 U.S. 491 (1950). H. Rep. No. 1365, 81st Cong., 2d Sess. 33 (1952).

The plaintiff in Savorgnan claimed that she had not lost her American citizenship because she had never intended to establish a permanent residence outside of the United States. The plaintiff had taken an oath renouncing her American citizenship, sworn allegiance to Italy, and lived in Italy with her Italian husband throughout World War II without retaining any abode in the United States. The Supreme Court held that Mrs. Savorgnan's residence during this period had been in Italy with her husband since residence under the Nationality Act of 1940 was the person's principal dwelling place regardless of intent (338 U.S. at 505-506):

> "Under the Act of 1940, the issue is not what her intent was on leaving the United States, nor whether at any later time, it was her intent to have a permanent residence abroad or to have a residence in the United States. The issue is only whether she did, at any time between July 1941, and November 1945, in fact 'reside' abroad. The test of such 'residence' is whether, at any time during that period, she did, in fact, have a 'principal dwelling place' or 'place of general abode' abroad. . . . Her intent as to her 'domicile' or as to her 'permanent residence,' as distinguished from her actual 'residence,' 'principal dwelling place,' and 'place of abode,' is not material. She expatriated herself under the laws of the United States by her naturalization as an Italian citizen followed by her residence abroad."

Subsequent judicial interpretation of Savorgnan and of the 1952 Act's definition of residence have rejected the Service's construction of the Act. The Immigration Service tried to equate physical presence with residence in Toy Teung Kwong v. Acheson, 97 F. Supp. 745 (S.D. Cal., 1951), Petition for Naturalization of Castrinakis, 179 F. Supp. 444 (D. Md., 1959), and In re Olan, 257 F. Supp. 884 (S.D. Cal., 1966). In all three cases the courts concluded that "actual residence is not synonymous with physical presence" but is a "question of fact" to be determined in each case. Toy Teung Kwong, 97 F. Supp. at 747; Castrinakis, 179 F. Supp. at 446; In re Olan, 257 F. Supp. at 893.

The seasonal commuter who spends over six months a year in this country is not a resident of the United States under Section 101(a)(33) of the Immigration and Nationality Act. When the seasonal agricultural worker spends more than six months in this country, he is typically following the crops, moving from one temporary shelter to the next. George Rosenberg, the Los Angeles District Director of the Immigration and Naturalization Service, described the usual pattern of the seasonal worker (Hearings on the Impact of Commuter Aliens Along the Mexican and Canadian Borders before the Select Commission on Western Hemisphere Immigration, Part II, p. 9 (1968)):

> "They [the seasonal worker] travel with the crops; wherever the crops are ready to be harvested, they keep going until they are through for the season."

These seasonal commuters customarily return to a dwelling place in Mexico which they continue to retain from year to year. It is clear that the "general abode," the "principal, actual dwelling place" of these workers is their home in Mexico, not any of their temporary shelters in the United States.

Even when the season worker does spend over six months with one employer, he does not usually retain this dwelling place when he returns to Mexico. He has no contract with the employer and, while he may try to obtain work there during the following harvest season, neither his former job nor his former shelter will necessarily be available to him. In contrast he customarily retains his dwelling place in Mexico, temporarily leaving it each year to seek work in the United States but returning to it at the end of the agricultural season in the United States. The "general abode," the "principal, actual dwelling place" of these workers, is the home in Mexico which they continue to maintain rather than the shelter in the United States to which they have no legal or other right to return.

In In Matter of C---- E----, 7 I. & N. 599 (1957), the Board of Immigration Appeals determined that the residence of a Mexican national was in Mexico in a situation analogous to that of seasonal commuters. The plaintiff frequently entered the United States both to work and visit relatives, sometimes for eight months at a time. The Board stated that the alien's stays in this country did not qualify as residence because he customarily lived in Mexico and, although he periodically came to the United States to work, his stays here were "temporary in nature." Id. at 600.

Commuters are not deemed to be residents of the United States for a variety of purposes. Commuters, like other non-resident aliens, pay federal taxes only on income earned in the United States rather than their total income. Staff Report of the United States Commission on Civil Rights, "The Commuter on the United States-Mexico Border," in Hearings on Employment of "Green Card" Aliens During Labor Disputes before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st

Sess. 166-167 (1969). "[I]t has been held that a commuter cannot even become a citizen (the assumed purpose for immigration under the Act) because, by definition, his assimilated status does not conform to the standard of residency (actual domicile in the United States) required by the Act for Naturalization." Id. at 166. See also p. 115 below. They cannot vote or hold office. S. Rep. No. 83, 91st Cong., 2d Sess. 63 (1969). A survey has shown that only 16.5 percent of commuters had served in the American armed forces in comparison to 94.4 percent who had served in the armed forces of Mexico. North, "The Border Crossers: People Who Live in Mexico and Work in the United States," prepared for the Manpower Administration, Department of Labor, pp. 205, 208 (April 1970).

The legislative history of Section 211(b) confirms that the phrase "returning resident immigrants" does not include daily or seasonal commuters. Prior to 1965, Section 211(b) included in the class of immigrants who could be admitted to the United States without an immigrant visa "otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily." 66 Stat. 181. In 1965, Section 211(b) was amended to its present wording of "returning resident immigrants." 8 U.S.C. 1181(b).

The Committee Reports accompanying the 1965 amendments do not specifically discuss the reason for the change in the wording of Section 211(b). However, all of the 1965 amendments must be interpreted in the light of their stated purpose to provide (S. Rep. No. 748, 89th Cong., 1st Sess. 10 (1965); H. Rep. No. 745, 89th Cong., 1st Sess. 18 (1965)):

> "Safeguards to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market."

The specific purpose of the amendment to Section 211(b) becomes clear from the hearings conducted on "commuter workers" by the House Committee on Immigration and Naturalization prior to the 1965 amendments. Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11 (1963). The Committee questioned the legality of the commuter practice and its adverse impact on the American economy. Id. at 166. During the course of the hearings, the Immigration Service relied on the pre-1965 version of Section 211 of the Immigration and Nationality Act as the statutory basis for the commuter practice. L. Paul Winings, then General Counsel of the Service, insisted that it did not strain the language of Section 211(b) to call the commuter's absences from the United States "temporary departures." Id. at 169. Walter Besterman, an authority on immigration law, who at the time of the 1963 hearings had been the Committee's legislative assistant for 17 years and who had been extremely influential in Congressional consideration of the 1952 Immigration Act, objected to this interpretation of the Act (id. at 168-169):

> "Is it your view of the very core of this problem that an immigrant who has not established permanent residence in the United States and is a commuter, in this class, is really complying with the law? Is his situation comparable to the status of the nonquota immigrant of the 101(a)(27)(B) class who is an immigrant lawfully admitted for permanent residence who is returning from a temporary visit abroad?
>
> "I am asking this question because you [Mr. Winings] mentioned earlier the situation of an immigrant who came here from overseas, established a residence but left his family behind and is going abroad to visit that family. That person would be, in my opinion, a returning immigrant when he comes back, regardless how often he makes the trip. But what is different is the commuter who has not established residence here and therefore is not returning thereto."

Besterman ended the Committee's examination of the legality of the commuter practice by tersely stating, "I do not want to prolong that. I think the facts are before the Subcommittee." Id. at 169.

The Committee responded to the Immigration Service's statutory defense of the commuter practice by reporting a bill which replaced the phrase "aliens lawfully admitted for permanent residence who depart from the United States temporarily" with the phrase "returning resident immigrants." H.R. 2580, Sec. 9, in H. Rep. No. 745, 89th Cong., 1st Sess. 6 (1965). In 1965, Congress adopted this language in the Act. Under the new language, it was no longer enough that an alien had been admitted for permanent residence as all immigrants are. Instead, it was necessary for the alien actually to be a resident of the United States. Congress plainly intended by this amendment to prevent the continued entrance of commuters into the United States without meeting the requirements for obtaining immigrant visas whether or not they worked over six months in the United States.

b. The commuter alien is not "lawfully admitted for permanent residence" or "returning from a temporary visit abroad" under Section 101(a)(27)(B) when he reenters the United States.

Commuter aliens should not be permitted to enter the United States without an immigrant visa because they are not "lawfully admitted for permanant residence" or "returning from a temporary visit abroad" as required by Section 101(a)(27)(B) of the Act, 8 U.S.C. 1101(a)(27)(B).

First, Section 101(a)(20) of the Act, 8 U.S.C. 1101 (a)(20), explicitly defines "lawfully admitted for permanent residence." The Act states that this phrase "means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."1/ However, the status of commuters has changed. While they were admitted for permanent residence, they either never assumed residence in the United States or subsequently abandoned that status. As we have described above (pp. 38-39), defendants concede that all daily

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1/ See pages 112-116 below for further analysis of the meaning of Section 101(a)(20).

commuters and those seasonal commuters who are not in the United States for six months each year are not residents. And, as we have shown (pp. 40-47 above), seasonal commuters who are in the United States for over six months but who have their homes in Mexico rather than the United States are also not residents of this country.

Second, the phrase "returning from a temporary visit abroad" clearly means an absence from, and a consequent return to, a more permanent place. Since the commuter leaves his permanent home in Mexico to come temporarily to the United States, his temporary visit abroad is not from the United States to Mexico but from Mexico to the United States. When the commuter returns to his permanent home in Mexico, he is not making a temporary visit abroad.

L. Paul Winings, then General Counsel of the Immigration and Naturalization Service, conceded in 1963 before the House Committee on Immigration and Naturalization that the ordinary meaning of "visit" in the phrase "temporary visit abroad" was an absence from a more permanent place. "One thinks of a visit as being, I presume, something away from a more permanent place." Study of Population and Immigration Problems, House Committee of the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 169 (1963). Winings claimed that the Service's approval of the commuter practice did not rely on Section 101(a)(27)(B) of the Act which referred to "a temporary visit abroad" but rather to the phrase in Section 211(b) referring to "otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily." 66 Stat. 181. That Section, however, as we have seen (pp. 44-47) was deliberately changed by Congress to remove the very language upon which the Service relied. In any event, by the Service's own admission, Section 101(a)(27)(B) provides no basis for allowing commuters to enter the United States without a visa.

The phrase "returning from a temporary visit abroad" has been part of immigration law describing non-quota aliens since the first Immigration Control Act of 1921. Section 2(d), 42 Stat. 5, 6. It was incorporated in the Immigration Act of 1924 (Sec. 4(b), 43 Stat. 153) and in Section 101(a)(27)(B) of the present Immigration Act of 1952 using precisely the same language. The Secretary of Labor interpreted "temporary visit abroad" in the Immigration Rules of 1924 (Rule 9, Subdivision G):

> "A 'temporary visit abroad' as used in subdivision (d) of section 2 of said Act of May, 1921, as amended shall be construed to mean an absence in any foreign country _without relinquishment of domicile_ for a period not exceeding six months." [Emphasis added]

This interpretation of "temporary visit abroad" has been approved repeatedly by the federal courts. _Transatlantic Italiana_ v. _Elting_, 66 F.2d 542, 545 (C.A. 2, 1933); _United States_ v. _Day_, 21 F.2d 307, 308 (C.A. 2, 1927); _International Mercantile Marine Co_. v. _Elting_, 67 F.2d 886, 889 (C.A. 2, 1933); Hurst v. Nagle, 30 F.2d 346, 347 (C.A. 9, 1929), certiorari denied, 279 U.S. 861; United States ex rel. Katric v. Reimer, 25 F. Supp. 925, 926 (S.D.N.Y., 1938); United States v. Parisi, 24 F. Supp. 414, 417 (D. Md., 1938). For example, in International Mercantile Marine Co. v. Elting, two immigrant aliens who had previously been admitted for permanent residence to the United States and had resided in this country sought admission as immigrants "returning from a temporary visit abroad." The court of appeals held that the aliens could not be readmitted to the United States as immigrant aliens returning from a temporary visit abroad because they did not have unrelinquished domiciles in this country (67 F.2d at 889):

> ". . . they were not temporary visitors abroad, but had relinquished their domicile in this country.
>
> "They were clearly quota immigrants, although they had formerly resided in this country. They had given up their domiciles here and were not returning from a temporary visit abroad."

In the treatise on immigration law co-authored by the present general counsel of the Immigration Service, the authors, citing International Mercantile Marine Co. v. Elting, state that the legal criteria for whether an alien is "returning from a temporary absence abroad" is "whether the alien intended to abandon his residence in the United States." 1 Gordon and Rosenfield, Immigration Law and Procedure, Sec. 2.19 (rev. ed., 1966).

Whether one accepts the judicial requirement of an "unrelinquished domicile" or Gordon and Rosenfield's "unrelinquished residence," neither the daily or seasonal commuter is returning from a temporary visit abroad when he enters the United States. No commuter alien has a domicile in this country. "Domicile" means a man's permanent home to which, whenever he is absent, he has the intention of returning. Matter of C----, 1 I. & N. 631, 633-635, 640 (1943); Matter of S----, 1 I. & N. 646, 649 (1943); Kennan, Kossuth, and Kent, A Treatise on Residence and Domicile, p. 33 (1934). The presumption of the law is against a change of domicile. Matter of C----, supra, 1 I. & N. at 635. In order to effect such a change an individual must establish a residence in a new domicile and intend to remain there permanently. Gilbert v. David, 235 U.S. 561, 590 (1915); Mitchell v. United States, 88 U.S. 350, 353 (1874); Matter of C----, supra, I. & N. at 635, note 8. Whether the commuter comes for daily or seasonal intervals, whether he spends more or less than six months in this country, his domicile or home, just like his residence, remains in Mexico.

We have seen above (pp. 38-39) that the Immigration Service does not even pretend that any daily commuters or those seasonal commuters who are present less than six months have residences in the United States, and this concession applies equally to their domicils. Although the

Service considers the seasonal worker who is physically present over six months in this country as a resident of the United States, a seasonal worker plainly does not have either an unrelinquished residence or unrelinquished domicile in this country.

> c. The commuter alien is not "returning to an unrelinquished lawful permanent residence in the United States after temporary absence abroad" under the Service's own regulations.

The Immigration and Naturalization Service promulgated regulations pursuant to Sections 211 and 101(a)(27)(B) of the Immigration Act (8 U.S.C. 1181 and 1101(a)(27)(B)), which define those persons who are permitted to use Alien Registration Receipt Cards, usually called "green cards." This regulation provides (8 C.F.R. 211.1(b)(1)):

> "In lieu of an immigrant visa, an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year may present Form I-151, Alien Registration Receipt Card. . . ." [Emphasis supplied]

This phrase--"unrelinquished lawful permanent residence in the United States after a temporary absence abroad"--was no mere inadvertance. It is repeated seven additional times in 8 C.F.R. 211.1(b) and 211.2.

The requirement of an unrelinquished permanent residence in the United States first appeared in 1957. 22 Fed. Reg. 6377. Previously, the regulation permitting entry without an immigrant visa stated (21 Fed. Reg. 832):

> "Immigrants of the following described classes applying for admission to the United States need not present visas and passports:
>
> "(c) Aliens of the following described classes who have been lawfully admitted for permanent residence and who are returning after a temporary absence:
>
> "(1) An alien who is returning to the United States after a temporary absence of not more than six months, only in some point or place in North, Central or South America, or the places named in Section 101(b)(5) of the Act, and who present a form I-151 duly issued to him.
>
> "(2) An alien who is returning from a temporary visit abroad and who presents a valid un-unexpired reentry permit."

Thus, the new regulation retained the earlier requirement that the alien was "returning from a temporary visit abroad" or "a temporary absence." However, the new regulation replaced the requirement that the alien be "lawfully admitted for permanent residence" with the much stronger and more explicit requirement that he have "an unrelinquished lawful permanent residence in the United States."

As we have seen (pp. 38-39), defendants have acknowledged that all daily commuters and those seasonal workers who spend less than six months in this country do not have a residence in the United States. They even more plainly do not have an "unrelinquished" and "permanent" residence in this country. Therefore, they must have an immigrant visa when they enter the United States and cannot use the Alien Registration Receipt card as substitute entry documentation.

The seasonal worker who spends more than six months in this country also plainly does not come within 8 C.F.R. 211.1(b)(1). We have shown (pp. 40-47) that such seasonal commuters do not have residences in the United States as residence is defined in Section 101(a)(33) of the Act. The language used in the regulation permitting use of the Alien Registration Receipt Card even more explicitly excludes the seasonal commuter who has been physically present in the United States for over six months but whose home remains in Mexico.

Under the regulation, the resident alien is specifically required to maintain an "unrelinquished" and "permanent" residence in this country. This plainly means that he must have a year-around residence in the United States. Seasonal workers who maintain year-around residences in Mexico and do not retain such residences in this country are clearly not returning to an unrelinquished or permanent residence in the United States. As a noted Mexican-American jurist, Philip Newman, testified in Hearings before the United States Inter-Agency Committee on Mexican-American Affairs ("The Legality of the 'Commuters' or Green Card Holders Working in the United States," p. 63 (1968)):

> "[A commuter] is not returning to an unrelinquished, lawful, permanent residence after a temporary absence not exceeding one year because his residence is not in the United States and as a rule he ha[s] maintained that residence in a foreign country for a period exceeding one year."

Consequently, defendants cannot allow daily or seasonal commuters to enter the United States pursuant to green cards even if, contrary to our arguments above, Sections 211(b) and 101(a)(27)(B) of the Act do not require immigrant aliens to enter the United States with an immigrant visa. Even if immigrant aliens are not required by statute to possess an immigrant visa to enter the country, they can only use a green card if they comply with restrictions on its use. The Attorney General created the green card administratively in 8 C.F.R. 211.1(b) and he can restrict its use. Indeed, he is given specific authority in Section 211(b) to set forth conditions for the entry of immigrants without immigrant visas. And the Supreme Court has held that "a regulation . . . should not be disregarded or annulled unless . . . it is plainly and palpably inconsistent with law" (Boske v. Coningore, 177 U.S. 459, 470 (1900)), and that valid regulations are binding upon federal agencies unless and until they are changed (Service v. Dulles, 354 U.S. 363, 388 (1957); Vitarelli v. Seaton, 359 U.S. 535, 539, 540 (1959)).

2. The Admission of Commuters Cannot Be Justified on the Ground of Administrative Practice or Congressional Approval.

We have shown above that the admission of daily and seasonal commuters with green cards plainly violates the Immigration and Nationality Act and the regulations promulgated under it. The Immigration and Naturalization Service does not seriously try to fit its actions within the words of the statute or even its own regulations. Instead, its principal argument is that the commuter system has gained legitimacy through long administrative practice and passive Congressional acquiescence in its continuance.

a. The Service's alleged administrative practice has admittedly been invented without support in applicable federal statutes.

Officials of the Immigration and Naturalization Service have been frank in admitting that the commuter practice was an administrative invention. Charles Gordon, the present General Counsel of the Immigration Service and co-author of an authoritative text on immigration law, calls the commuter status "a device of convenience," "never specifically . . . authorized by statute." Gordon, "The Amiable Fiction--Alien Commuters Under Our Immigration Laws," in Hearings on Employment of "Green Card" Aliens During Labor Disputes Before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 181-182 (1969). Mr. Gordon uses the phrase "amiable fiction" to describe the anomalous situation of the commuter. Id. at 181, 186. Similarly, Gordon and Rosenfield in their treatise on immigration law state (Sec. 2.86):

> "Where this employment (of Mexicans and Canadians) is permanent in character administrative ingenuity has devised a 'commuter'

> status, which enables the Canadian or Mexican to obtain lawful admission for permanent residence in order that he may be able to pursue his employment here, and his right to enter each day is attested by his alien registration receipt card. Of course, this device is an amiable fiction, since the commuter is coming temporarily and usually returns to his home in Canada or Mexico each night."

Subsequently, in their 1968 supplement (Sec. 2.19), the authors again admit that since commuters "reside in adjacent countries," "the practice does not fit precisely within the statutory pattern . . . [and] does involve some logical inconsistency."

The Board of Immigration Appeals has likewise stated that (Matter of M---- D---- S----, 7 I. & N. 209 (1958)):

> "The commuter situation manifestly does not fit into any precise category found in the immigration statutes. The status is an artificial one, predicated upon good international relations maintained and cherished between friendly neighbors."

In Matter of H---- O----, 5 I. & N. 716, 719, note 13 (1954), the Board referred to "the fiction of a commuter's permanent residence coinciding with his place of employment. . . ." Accord, Matter of L----, 8 I. & N. 643, 646 (1960); Matter of J---- P----, 9 I. & N. 591, 593-594 (1962); Matter of Burciago-Salcedo, 11 I. & N. 665, 667 (1966); Matter of Gerhard, 12 I. & N. 556, 557 (1967). And in Cermeno-Cerna v. Farrell, 291 F. Supp. 521, 529 (N.D. Cal., 1968), pending on appeal to the Court of Appeals for the Ninth Circuit, the court reiterated that the commuter status was a "fiction" which has "no statutory or constitutional status."

In short, the Immigration and Naturalization Service freely admits that the commuter practice is not authorized by any statute but was simply invented and continued to meet a need which the Service believes exists.

b. Administrative practice and passive Congressional acquiescence are not controlling since the statute is clear and unambiguous and its purpose is to protect American labor.

The courts have held that a contemporaneous construction of an ambiguous or doubtful statutory provision by an administrative agency is entitled to weight. Sanfords Estate v. Commissioner, 308 U.S. 39, 52 (1939); Houghton v. Payne, 194 U.S. 88, 100 (1904). But an administrative practice, however long continued and consistently applied by successive administrative officers, must yield to the language of the statute. United States v. Kirkpatrick, 22 U.S. (9 Wheat.) 720, 735 (1824); Houghton v. Payne, supra, 194 U.S. at 99-100; Louisville & N.R. Co. v. United States, 282 U.S. 740, 759 (1931); Koshland v. Helvering, 298 U.S. 444, 447 (1936). In other words, if the administrative construction of the statute is erroneous, it is, of course, not controlling. Houghton v. Payne, supra, 194 U.S. at 100.

The courts have sometimes held that Congressional reenactment of a statute, in the light of a clear administrative practice, is entitled to consideration by a court attempting to construe a federal statute. However, "where the law is plain, the subsequent reenactment of a statute does not constitute adoption of its administrative construction." Biddle v. Commissioner, 302 U.S. 573, 582 (1938). See also, e.g., Savings Bank v. United States, 86 U.S. (19 Wall.) 227, 237 (1873); United States v. Missouri Pac. R. Co., 278 U.S. 269, 280 (1929); Louisville & N.R. Co. v. United States, supra, 282 U.S. at 757, 759.

In short, as the Supreme Court has repeatedly held, the plain meaning of a statute is controlling. "That a law is the best exposition of itself . . . are among those plain rules laid down by common sense for the exposition of statutes which have been uniformly acknowledged." Pennington v. Coxe, 6 U.S. (2 Cranch) 34, 52-53 (1804). See also, e.g., United States v. Missouri Pacific R.R. Co., supra, 278 U.S. at 278; Helvering v. City Bank Farmers Trust Co., 296 U.S. 85, 89 (1935). The words of a statute may not be ignored or reinterpreted in order to avoid administrative difficulties (Addison v. Holly Hill Fruit Products, 322 U.S. 607, 617 (1944); Barr v. United States, 324 U.S. 83, 94-95 (1945)), or to prevent apparent hardship (Corona Coal Co. v. United States, 263 U.S. 537, 540 (1940); Old Colony R. Co. v. Commissioner, 284 U.S. 553, 560 (1932); Jay v. Boyd, 351 U.S. 345, 357 (1956). Where the words are clear and unambiguous, no other sources for judicial interpretation are necessary or appropriate. Therefore, the language of Sections 211(b) and 101(a)(27)(B) of the Immigration and Nationality Act are binding in this case.

As we have seen (pp. 36-52), the Service's practice of admitting commuters with green cards is clearly inconsistent with the language of at least two provisions of the Immigration Act. Indeed, it is not an attempt to construe statutory provisions at all but is admittedly an administrative invention. See pp. 56-58 above. Instead of being a construction of a statute, it was designed to avoid statutory provisions because of the Service's belief that they are inappropriate. Consequently, the administrative practice is not entitled to serious consideration even if it were long, continuous, and consistent.

Furthermore, even if some doubt could exist concerning Section 211(b) and 101(a)(27)(B), this doubt must be principally resolved in the light of their purpose. It is a well-established rule that, when a statutory provision requires interpretation, it should be interpreted according to the ordinary import of its language in the light of the policy and object of the act in which it appears (Gayle v. Wilder, 51 U.S. 477, 496 (1850)):

> "It is not by detached words and phrases that a statute ought to be expounded. The whole act must be taken together, and a fair interpretation given to it, neither extending nor restricting it beyond the legitimate import of its language and its obvious policy and object."

See also, e.g., Helvering v. N.Y. Trust Co., 292 U.S. 455, 464-465 (1934); Richards v. United States, 369 U.S. 1, 11 (1962).

One of the principal purposes and objects of the Immigration and Nationality Act of 1952 and its 1965 amendments, like all earlier immigration acts, was to protect American labor. The Supreme Court in Karnuth ex rel. Albro v. United States, supra, 279 U.S. at 243, 244, emphasized the long existing Congressional policy of protecting American labor through the immigration laws:

> "The various acts of Congress since 1916 evince a progressive policy of restricting immigration. The history of this legislation points out clearly to the conclusion that one of its great purposes was to protect American labor against the influx of foreign labor. . . . The report of the House Committee to accompany the bill which afterwards became the Act of 1924, now under consideration (H. of R. Report 350, 68th Cong., 1st Sess.) likewise makes clear that protection of American labor was one of the controlling reasons for further restriction of immigration."

Congress was particularly concerned about aliens who were coming to the United States not to take up residence but to exploit the country's labor opportunities at the expense of domestic American workers (id. at 244):

> "In the Senate report upon the same bill (S. Report 17, 67th Cong., 1st Sess. p. 4) one of the evils pointed out was that a large part of the new immigration had been of a migratory character, immigrants coming to the United States not so much for the purpose of permanent residence as to seek temporary profitable employment."

The steps taken in the last two decades to control immigration have shown an even stronger purpose to protect American labor. The Immigration and Nationality Act of 1952 and the 1965 amendments reaffirmed the earlier Congressional policy of protecting American labor:

> "While the bill [the Immigration and Nationality Act of 1952] will remove the 'contract labor clauses' from the law, it provides strong safeguards for American labor." H. Rep. No. 1365, 82d Cong., 2d Sess. 50 (1952).
>
> "Safeguards to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market are strengthened." S. Rep. No. 748, 89th Cong., 1st Sess. 10 (1965).

Consequently, Congress in Sections 101(a)(15)(H) and 212(a)(14) added new provisions to provide this protection. These sections allow non-immigrants and immigrants, respectively, to enter the United States only if there is no existing labor surplus in their area of employment. These provisions on their face have as their purpose the protection of American labor. As this court stated in Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114, 119 (1969), Section 212(a)(14), "with §101(a)(15)(H), was newly designed by the 1952 act in order to assure 'strong safeguards for American labor.'" And the recent quota on

Immigration from the Western Hemisphere provided in the 1965 amendments and implemented in 1968 (Act of Oct. 3, 1965, Sec. 21(a), 79 Stat. 921) further evidences the Congressional awareness and concern over the influx of laborers from Mexico and other Western Hemisphere nations.

Both the language and purpose of the Immigration and Nationality Act are consistent in attempting to protect American labor from commuter aliens who pose a serious economic threat to them. In light of this strong and clear policy of protecting American laborers from competition with foreign workers through the immigration laws, there is no basis for a strained interpretation of the Immigration and Nationality Act.

c. The commuter practice is not supported by long, clear, and consistent administrative practice.

Even if the statute were less clear and required interpretation, the administrative practice gives little support to the Service's position. An administrative practice is entitled to weight in construing an ambiguous statute only if it is consistent, clear, and of long duration. Iselin v. United States, 270 U.S. 245, 251 (1945); Helvering v. Hallock, 309 U.S. 106, 120, note 7 (1941); United States v. Missouri Pacific R. Co., supra, 278 U.S. at 280; Burnet v. Chicago Portrait Co., 285 U.S. 1, 16, 20-21 (1932). The commuter system meets none of these criteria.

(i) First, the commuter system is, as we have seen (pp. 52-55), directly inconsistent with the Service's own regulations. 8 C.F.R. 211.1(b)(1). Such regulations constitute the highest administrative authority. They are published in the Federal Register. Section 211.1(b)(1) constitutes the Service's reasoned judgment as to the meaning of Section 211(b) of the Immigration and Nationality Act which specifically authorizes the Service to promulgate regulations providing conditions for the entrance of immigrants without immigrant visas. They are legally binding until changed. Service v. Dulles, supra, 354 U.S. at 388; Vitarelli v. Seaton, supra, 359 U.S. at 539-540. The fact that these regulations have not been enforced merely demonstrates that the Service has illegally refused to follow its own regulations as well as the applicable statutes.

(ii) Second, the Immigration Service may not even claim consistency in its administration of the commuter practice. Until recently, the Service required commuters to have a "permanent and stable" job in this country in order to maintain their immigrant status. In 1965, this requirement was changed to "regular and stable" employment. In Matter of Bailey, 11 I. & N. 466. The Board of Immigration and Naturalization Appeals has interpreted the new standard to broaden significantly the category of immigrants allowed to enter the country. In Bailey, the

Immigration Board concluded that an alien employed full time in Canada who occasionally came to the United States in his spare time to seek work as a carpenter had regular and stable employment in this country and thereby qualified for the commuter status. According to the report prepared by the Immigration Service for the Select Commission on Western Hemisphere Immigration, the Board's interpretation of regular and stable employment has authorized the entry as commuter immigrants of individuals having a very minimal contact with the United States. The report stated that, under the regular and stable formula, many aliens are allowed to cross our southern borders to go to private employment offices where they seek day-to-day or seasonal employment. Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges and Issues," in Report of the Select Commission on Western Hemisphere Immigration, p. 105 (1968).

Moreover, prior to 1965, the commuter practice only covered daily commuters. In that year, as we will see below (pp. 71-74), the system was greatly expanded to cover seasonal commuters. This expansion further demonstrates that the Service has not been following a consistent administrative policy.

(iii) Third, whenever the Service has tried to justify its practice on any statutory basis at all, it has had inconsistent positions. Initially, the Service authorized the commuters to enter the country daily with the now defunct "border crossing identification card," used by citizens and aliens, non-immigrants and immigrants, who frequently crossed the border. Immigration Rules of January 1, 1930, Rule 3, Subdivision Q, Para. 1. The Service made no attempt to justify the commuter's use of the border crossing card under any provisions of the Immigration Act of 1924 which had strict documentary requirements for visa or reentry permits for immigrants. Sec. 13(a), 43 Stat. 161-162. Rather, the statutory justification given for the border crossing card was Section 24 of the Immigration Act of 1924, 43 Stat. 166, and Section 23 of the Immigration Act of 1917, 39 Stat. 892-893. See 8 C.F.R., notes to 3.1 and 3.53 (1930). Since Section 24 of the Immigration Act of 1924 merely authorized the Attorney General to "prescribe rules and regulations for the enforcement of the provisions of this Act," it could not be used as independent authority for a regulation which was not authorized by another provision of the 1924 Act. Section 23 of the Immigration Act of 1917 was a general provision authorizing the Commissioner of Immigration to facilitate travel between the United States and border nations. That statute clearly was no basis for the waiver of an immigration visa for commuter immigrants after passage of the restrictive Immigration Acts of 1921 and 1924.

After the Immigration Act of 1952, the Immigration Service found statutory justification for the commuter practice in Section 211(b) of that Act. 66 Stat. 181. Testimony of L. Paul Winings, General Counsel of the Immigration and Naturalization Service, Studies of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 169 (1963). That section authorized the Attorney General to waive documentary requirement for immigrants "who depart from the United States temporarily." But, as we have seen above (pp. 44-47), the language in Section 211(b) can no longer be the basis for the Service's continued acceptance of the commuter system because these words were removed in the 1965 amendments and replaced by language which plainly does not include commuters.

More recently, the Immigration Service has sought to justify its waiver of the immigrant visa for the commuter and its acceptance of the border crossing card under a provision of the Immigration Act of 1924. Brief for Appellee, Gooch v. Clark, Nos. 24,788 and 24,791, United States Court of Appeals for the Ninth Circuit, pp. 22-23. Section 13(b) of that Act, 43 Stat. 161, states:

> "In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

Section 13(b) was never cited in any of the regulations authorizing the border crossing identification card but is rather an ex post facto rationale conceived in the last decade. Moreover, it is clear that use of the border crossing card was not based on Section 13(b).

First, the border crossing card regulation, which was first promulgated in 1917 pursuant to Section 23 of the 1917 Immigration Act, could not have been based on any statutory authority in the 1924 Act.

Second, that Section is specifically limited to immigrants and the border crossing card was issued to all American citizens and aliens, non-immigrants as well as immigrants, who habitually crossed the border.

Third, the 1917 regulation was republished unchanged in 1925, 1927, and 1930. Cf. Immigration Rules of May 1, 1917, Rule 12, Subdivision 9 and Rule 13, Subdivision 3 with Immigration Rules of July 1, 1925, Rule 3, Subdivision R; Immigration Rules of March 1, 1927, Rule 3, Subdivision Q, Para. 1; Immigration Rules of January 1, 1930, Rule 3, Subdivision Q, Para. 1. It was logical to continue to utilize the border crossing card in order to facilitate the entry of non-immigrants since there was no requirement of documentation in the 1924 Act. Hearings to Clarify the Law Relating to the Temporary Admission of Aliens to the United States before the Senate Subcommittee on Immigration, 70th Cong., 2d Sess. 42 (1929). However, the Service could not properly allow the commuter immigrant to cross the border without the reentry permit or immigrant visa required by the 1924 Immigration Act.

Fourth, Section 13(b) could not properly authorize commuters to use a border crossing card since it applies only to immigrants who "depart . . . temporarily" from the United States. An alien with a permanent residence in Mexico and without a residence in the United States does not depart temporarily when he leaves this country for Mexico.

(iv) Finally, the commuter practice is not of long duration in any meaningful sense. Prior to the adoption of the Immigration and Nationality Act of 1952, the practice was of little substantive significance. Since there was no quota on Mexican nationals and no prohibition against immigrants coming to the country because of a surplus of domestic labor in their field of employment (see pp. 17, 22 above), Mexican nationals were entitled to enter the country as immigrants virtually without restriction. However, if daily commuters had been required to obtain an immigrant visa for every entry into the country, this would have imposed a heavy burden on both the immigrant and the Service. The immigrant could presumably have obtained such visas if he went to the trouble of applying for a visa for every working day and the Service went to the trouble of processing every application. Consequently, the commuter practice was actually only an invention to meet a severe administrative problem. In a statement prepared for the House Immigration and Naturalization Committee on the initial development of the commuter program, L. Paul Winings, then General Counsel of the Service, described how the Service "devised" the status (Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 178 (1963) and INS Responses, supra, p. 1-6):

> "In studying the problem at that time [after the passage of the Immigration Act of 1924] the immigration authorities concluded that Congress had not intended to interfere with the established pattern of regular border crossings by workers from adjacent countries who commuted to jobs in the United States. Such aliens, almost without exception, could obtain immigrant visas without difficulty. But they would be faced with an impossible task if they were required to obtain a new visa for each daily reentry. Therefore, the immigration authorities devised a border-crossing identification card which could be obtained by aliens who frequently crossed the international boundary."

In short, prior to 1952 the commuter practice did not give the commuter any substantive rights to enter which he did not have under immigration law.[1/]

In sharp contrast, the continuation of the commuter system after 1952 for the first time directly undermined substantive protections designed by Congress to protect American labor. In 1952, Congress provided that immigrants could not enter the United States if the Secretary of Labor

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[1/] There was considerable opposition to the commuter system even prior to 1952 because of its harm to American labor. The Senate and House passed bills separately on several occasions to solve the commuter problem but never agreed to the same solution. Hearings on H.R. 5139, Crime to Promote the Overthrow of Government before Subcommittee No. 3 of the House Committee on the Juriciary, Serial No. 3, 76th Cong., 1st Sess. 74 (1939). Some of the bills sought to forbid any alien from working in the United States and living in continuous countries. Id. at 3. Other bills introduced no substantive changes but sought to make the Immigration Service comply with the Immigration Act of 1924 requiring commuters to obtain a visa for every entry. H. Rep. No. 1236, 73d Cong., 2d Sess. (1934); H. Rep. No. 1276, 74th Cong., 1st Sess. (1935); H. Rep. No. 159, 75th Cong., 1st Sess. (1937).

found that an economic threat to American labor would result. 66 Stat. 183. In 1965, Congress strengthened this provision to forbid immigrants to enter the United States unless the Secretary of Labor determined that no threat existed. Section 212(a)(14) of the Act, 8 U.S.C. 1182(a) (14). And in 1968 a quota was for the first time imposed on immigrants from Mexico. Act of Oct. 3, 1965, Sec. 21(e), 79 Stat. 921.

The commuter system undermines those protections. It allows Mexican aliens to continue to enter the United States indefinitely even though they are economic threats to American labor. They can continue to come although Congress has imposed a quota to limit entry of Mexican and other Western Hemisphere nationals.

While the daily commuter system started in 1924 and became legally significant only in 1952, the seasonal commuter system did not even begin until 1965. INS Responses, _supra_, pp. 1-10.

The bracero program, which had been begun in 1943, allowed Mexican nationals to enter the United States to work during the agricultural season. The bracero program as it existed on the eve of its termination in 1964 had many safeguards to protect American labor. The Secretary of Labor determined wages and set standards for working and living conditions under which the bracero would be employed. In addition, no Mexican farmworkers could be brought into the United States until the Secretary of Labor had determined and certified that (Report of the Select Commission on Western Hemisphere Immigration, p. 92 (1968)):

> "(1) Sufficient domestic workers, able, willing and qualified, were not available at the time and place needed to perform the work for which such braceros were to be employed;
>
> "(2) The employment of such workers would not adversely affect the wages and working conditions of domestic workers similarly employed; and
>
> "(3) That reasonable effort had been made to attract domestic workers for such employment at wages and conditions comparable to those offered to braceros."

Despite the protective features of the bracero program, there was a growing concern in the country over the adverse impact of the bracero program on domestic labor. See Statement of President Kennedy signing the final extension of the bracero program in 1961 in Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, 41 (1963); Report of the Secretary of Labor, "Year of Transition, Seasonal Farm Labor--1965," pp. 1-2, Appendix H-1, H-2 (1965). As a result, Congress refused to allow the program to continue in 1964. It intended, as we will see below (pp. 101-108), to protect American labor from low-priced foreign competition and to require that the future entry of Mexican nationals for farm work be governed by the provisions applying to non-immigrants under Section 101(a)(15)(H)(ii).

When farmers in the southwestern United States saw that the end of the bracero program was near, they obtained immigrant visas for many of their Mexican workers. Thus, when the bracero program came to an end in 1964, many ex-braceros, now nominally permanent resident aliens, started entering the country as seasonal commuters in the spring, following the crops through various parts of the country and returning to their permanent residences in Mexico at the end of the harvest season. Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges and Issues" in Report of Select Commission on Western Hemisphere Immigration, p. 104 (1968); Hearings on Employment of "Green Card" Aliens During Labor Disputes before Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 73 (1969). In order to allow these ex-braceros to enter the country, the Immigration Service, as it unabashedly admits, created a new class of commuters after 1964 to allow them to enter as seasonal workers (id. at 70):

> "A new class has come into being whom I would call the seasonal worker, a person who comes into the United States, for instance, at the opening of a growing season, has moved north as the crops mature; and at the end of the growing season, he has returned to Mexico."

In creating this new class, the Immigration Service had to flagrantly ignore Section 101(a)(15)(H) which was designed to provide for seasonal employment. See pp. 101-108 below. In addition, the Service had to change one of its standards concerning commuters to accommodate the new seasonal commuter. Prior to 1965, it had been the position of the Immigration Service that "an alien is entitled to commuter status only if he has a permanent and stable job in this country." Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges and Issues," in Report of the Select Commission on Western Hemisphere Immigration, pp. 103, 105 (1968); Matter of L----, 8 I. & N. 643 (1960). The Immigration Service has stated that ("Commuters--Historical Background, Legal Challenges and Issues," supra, p. 105):

> "It had been the position of the Service that a commuter must engage in employment which is 'permanent and stable' in order to maintain his status. If that test were applied to the employment of the above workers [seasonal commuters], many would lose their status."

However, in 1965, the Immigration Board of Appeals changed the requirement to "regular and stable" employment and interpreted that phrase loosely to allow the entrance of seasonal commuters. Ibid.; Matter of Bailey, 11 I. & N. 466 (1965).

As a result of the Immigration Service's broadening of the commuter concept, the commuter is no longer a threat simply to our border communities. The seasonal commuter has now entered the migrant stream in areas far inland in competition with this country's most depressed and economically deprived work force.

d. Congress has never given tacit or other approval to the commuter practice.

The Immigration Service has claimed that several immigration laws have been enacted since the start of the commuter practice, including the comprehensive Immigration and Nationality Act of 1952, without Congressional disapproval of the practice. Defendants rely on this alleged tacit approval by Congress as their strongest support.

The Supreme Court has generally looked with disfavor upon the proposition that reenactment of a statute constitutes a legislative adoption of its administrative construction. Commissioner v. Glenshaw Glass, 348 U.S. 426, 431 (1955); Helvering v. Hallock, supra, 309 U.S. at 121; Wong Yang Sung v. McGrath, 339 U.S. 33, 47-48 (1950).

The Court has said of the reenactment theory (Helvering v. Hallock, supra, 309 U.S. at 119-120, 121):

> "To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities."

* * *

> "Various considerations of parliamentary tactics and strategy might be suggested as reasons for the inaction of the Treasury and of Congress, but they would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle."

The reasons for the Court's reluctance to accept reenactment as Congressional approval of an administrative practice have been ably set forth in Hart and Sachs' authoritative treatise on The Legal Process: Basic Problems in the Making and Application of Law (1958). In a chapter on "The Implication of Reenactment," the authors conclude that since the legislature is not under a duty to act in every case where a question affecting the public policy has been acted upon by an administrative agency, it is not rational to attach any significance to its failure to act in a given case. Id. at 1395. The authors state that the reenactment theory is especially inappropriate in the situation of a revision and codification of an entire branch of statutory law. Such an enterprise is a necessarily technical chore having little political appeal. In order to be successful, it must be a bipartisan effort free from controversy. Acceptance of the reenactment theory would force the legislature to either of two equally untenable alternatives--either to do nothing, leaving the area of law in confusion, or to act decisively on each area of controversy which has arisen under the various statutes. Id. at 1402-1404.

Hart and Sachs use as their example of the unreasonableness of the reenactment theory in the codification of an area of law, the Nationality Act of 1940. Id. at 1402-1403. Thus, Hart and Sachs are using the very area of law involved in this case. The 1940 Nationality Act, of course, was in turn recodified in the much more comprehensive and, correspondingly, more intricate Immigration and Nationality Act of 1952.

It is therefore appropriate to scrutinize the Service's reenactment theory with great care as to whether

Congress has in fact intended to approve the Service's administrative practice. We submit that such scrutiny will show that the Service's contention based on tacit approval is erroneous for at least four reasons.

First, as we have seen (p. 59), tacit Congressional approval of administrative or judicial interpretation based on reenactment of a statute cannot change the meaning of a clear federal statute. In other words, when the administrative construction is erroneous, as in the present case, reenactment of the statute will not give it validity.

Second, reenactment of a federal statute can only constitute Congressional approval of a practice which has been clear, consistent, and long confirmed. Iselin v. United States, supra, 270 U.S. at 251; Helvering v. Hallock, supra, 309 U.S. at 120; United States v. Missouri Pacific R. Co., supra, 278 U.S. at 280; Burnet v. Chicago Portrait Co., supra, 285 U.S. at 16, 20-21. As we have seen (pp. 64-65), the Service's administration of this statute has not been consistent.

Third, the Service's administrative practice did not exist when the statutes in question were enacted. The seasonal commuter practice began in 1965 and Congress believed that seasonal agricultural workers would be covered under Section 101(a)(15)(H)(ii) of existing law. See pp. 71-74 above, and pp. 101-108 below. Since no significant immigration statute has been enacted subsequent to 1965 when the Service ignored both the statute and Congress' purpose, Congress could not possibly have acquiesced in the Service's illegal actions.

While the daily commuter procedure began in 1924, it had no important substantive effect until after adoption of the 1952 Act. The only important immigration legislation adopted since 1952 was the 1965 amendments. As we have seen (pp. 44-47), Congress, far from approving the commuter practice in the 1965 amendments, strongly indicated its disapproval and its intention to end it.

Fourth, there is no specific indication in the history of any immigration law that Congress intended to approve the commuter practice. The Service is therefore forced to rely on the alleged existence of its practice, Congressional knowledge of it, and the fact that Congress passed immigration legislation. Congressional action in passing immigration legislation, without any suggestion of approval of the commuter practice, is hardly entitled to significant weight.

In the past, defendants have pointed to references to the commuter program in the Senate and House Reports accompanying the Immigration Act of 1952 as explicit endorsement. _In the Matter of H---- O----_, 5 I. & N. 716, 716-717 (1954); _Study of Population and Immigration Problems_, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 179 (1963); Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges, and Issues," in Report of the Select Commission on Western Hemisphere Immigration, p. 102 (1968). Hearings held on the commuter problem in 1963, prior to the 1965 amendments to the Immigration Act, have also been cited as approving the practice. Id. at 102. Defendants' reliance on the history of the 1952 and 1965 acts is without foundation.

(i) The Immigration Service has cited several passages from the legislative history of the Immigration Act of 1952. S. Rep. No. 1515, 81st Cong., 2d Sess. (1950); S. Rep. No. 1137, 82 Cong., 2d Sess. (1952); H. Rep. No. 1365, 82 Cong., 2d Sess. (1952). Senate Report No. 1515 does, indeed, mention the commuter practice (pp. 535-536, 616). This reference to the commuter must be read in the context of the entire report in which it appears. Senate Report 1515 is a lengthy report of some 925 pages prepared early in 1950 describing the immigration system of the United States as it existed prior to the enactment of the Immigration Act of 1952. The reference to the commuter practice is no more than a description of current immigration practices as they existed at that time.

The later Senate Report No. 1137 does not even acknowledge the commuter practice, much less endorse it. In a section-by-section analysis of the proposed Immigration Act of 1952, the border crossing identification card is discussed as follows (p. 4):

> "The term 'border-crossing identification card' is defined to mean a document of identity issued to an alien who is lawfully admitted for permanent residence or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of border travel between the United States and foreign contiguous territory. While the border crossing identification card is referred to in the Alien Registration Act of 1940, it is not defined, and in view of its significance in relation to the tremendous volume of cross-border travel of aliens over the Canadian and Mexican borders, it seems desirable to circumscribe its permissible use as a means of documentation of aliens with definite statutory limitations."

The definition of border crossing identification card suggested in the above analysis was substantially adopted in Section 101(a)(6) of the Immigration Act of 1952 (8 U.S.C. 1101(a)(6)):

> "(6) The term 'border crossing identification card' means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in a foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations."

This definition is hardly an endorsement of the commuter system. In fact, the analysis in Senate Report 1137 makes clear that the new definition was designed to tighten, "to circumscribe," the use of the border crossing identification card.[1] The section of House Report 1365 which immigration authorities cite as "implicit endorsement" of the commuter practice (p. 32) is identical to the section analyzing the border crossing identification card in Senate Report 1137.

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[1] Under Section 101(a)(6), the border crossing identification card is only to be issued to "an alien who is lawfully

Congress not only did not register approval for the commuter practice in the legislative history accompanying the Immigration and Nationality Act of 1952 but in fact tightened the language of provisions which the Service had cited to support the practice and added new provisions to immigration law to further protect domestic labor.

For example, prior to the 1952 Act, the term "nonquota immigrant" was defined as an "immigrant who is returning from a temporary visit abroad." Immigration Act of 1924, Sec. 4(b), 43 Stat. 155. The 1952 Act tightened the definition by adding the phrase "lawfully admitted for permanent residence." Section 101(a)(27)(B); 8 U.S.C. 1101(a)(27)(B). Similarly, Section 13(b) of the 1924 Act provided that an immigrant who had "been legally admitted to the United States and who departed therefrom

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admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory." This definition strongly implies that the two categories are mutually exclusive. An alien lawfully admitted for permanent residence is differentiated from an alien who resides in a foreign contiguous country. The commuter alien who resides in a foreign contiguous country is not properly considered an alien lawfully admitted for permanent residence. Section 101(a)(6) supports plaintiffs' contention that commuters should be considered as non-immigrant rather than immigrant aliens. See pp. 100-116 below.

temporarily" may be admitted without an immigration visa. 43 Stat. 161. Section 211(b) of the 1952 Act added "lawfully admitted for permanent residence." 66 Stat. 181. These definitions relate directly to the commuter issue since it is Section 211(b) which authorizes the admission of immigrants without immigrant visas and that section defines the eligible immigrants as those coming within the definition of non-quota immigrants.[1/]

Several new provisions were added to immigration law by the Immigration and Nationality Act of 1952 which are also pertinent to the commuter situation. For the first time, the concept of "residence" was defined. Section 101(a)(33), 8 U.S.C. 1101(a)(33). Residence means "the place of general abode" which in turn is defined as the "principal, actual dwelling place in fact, without regard to intent." As we have seen (pp. 38-47), commuters do not have a residence in the United States under the Act's new definition of residence.

The 1952 Act added in Section 212(a)(14) a labor certification provision to exclude immigrants who would economically harm American workers. 66 Stat. 183. If the Secretary of Labor determined that such immigrants would work in employment having a surplus of domestic labor or would adversely affect wages or working conditions of domestic labor, they could not obtain immigrant visas to

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[1/] After the 1965 amendments, these immigrants were labeled as "special immigrants." Section 101(a)(27)(B).

enter the country. This new provision, particularly as strengthened by the 1965 amendments, offers additional protection for domestic labor. This protection is significantly undermined by continuance of the commuter system because the Service permits commuters to enter pursuant to green cards without a labor certification.

Finally, the 1952 Act added two provisions to immigration law which principally involve Claim II. One, Section 101(a)(20) of the Act (8 U.S.C. 1101(a)(20)), defined "lawfully admitted for permanent residence" to state specifically that an alien continues to come within this category only as long as his status has not changed. The other, Section 101(a)(15)(H)(ii) of the Act (8 U.S.C. 1101(a)(15)(H)(ii)), adds a new non-immigrant category for persons coming temporarily to work in the United States. This section allows such temporary workers to enter only "if unemployed persons capable of performing such service or labor cannot be found in this country." In Claim II we show that these new sections demonstrate that all seasonal commuters and those daily commuters who work only part of year in the United States are properly non-immigrant aliens under Section 101(a)(15)(H)(ii) and cannot enter if there is a surplus of farm labor.

(ii) The Immigration Service has also cited House Judiciary Committee hearings (Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11 (1963), held prior to the 1965 amendments to the Immigration Act, as indicative of Congress' tacit approval of the commuter practice. Immigration and Naturalization Service, "Commuters--Historical Background, Legal Challenges, and Issues," in Report of the Select Commission on Western Hemisphere Immigration, p. 102 (1968). Even the most cursory reading of these hearings indicates that the Committee was extremely dissatisfied with the commuter practice. The Committee challenged the legality of the practice and expressed deep concern over its impact on domestic labor. Study of Population and Immigration Problems, supra, pp. 166-169.

The 1965 amendments reflected the dissatisfaction of the House Judiciary Committee with the commuter practice.

First, Section 212(a) of the Act was drastically strengthened. Whereas previously an immigrant could enter the country unless the Secretary of Labor determined that his entry economically threatened American labor, the new statute provided that he could not enter the country unless the Secretary of Labor determined that his entry would not threaten American labor. Pursuant to this provision, the Secretary certified in 1965 that the supply of domestic farm labor was sufficient and that admission of farm laborers would adversely affect wages and working conditions of domestic farm workers. Schedule B, following 29 C.F.R. 60.6.

Second, as we have seen (pp. 44-47), Congress reworded Section 211(b) to allow waiver of the visa requirement only in the case of "returning resident immigrants" in order to remove the statutory basis for the use of green cards by commuters.

(iii) The Immigration Service has also found Congressional approval for the commuter practice in an alleged lack of criticism of the practice. The Board of Immigration Appeals has stated (Matter of Bailey, 11 I. & N. 466, 467 (1965)):

> "Congressional approval of the commuter status is found in the fact that Congress has shown awareness of the status and has not criticized it. . . ."

This statement is simply erroneous. Beginning with the 1963 study of commuters conducted by the House Committee on Immigration and Naturalization, Congress has repeatedly examined and denounced the commuter practice not only on the basis of public policy but because it violates the immigration laws. The Senate Subcommittee on Immigration and Naturalization conducted hearings on the Alien Commuter "Green Card" System in 1967; the Select Commission on Western Hemisphere Immigration held five sets of hearings on the Impact of Commuter Aliens along the Mexican and Canadian borders in 1968; the House Special Subcommittee on Labor held hearings in 1969 on the Employment of "Green Card" Aliens during Labor Disputes; and the Senate Subcommittee on Migratory Labor had hearings on Migrant and Seasonal Farmworker Powerlessness--

the Border Commuter Labor problem in 1969. During these studies of the commuter problem, many Congressional leaders clearly stated that the practice violated the letter and intent of the immigration law:

> "Senator Kennedy [floor manager for 1965 Immigration Amendments]: First, the system is a creature of administrative ingenuity, without statutory base, and for more than 40 years has operated rather freely outside the immigration laws. Problems have inevitably emerged. Adequate determinations have not been made, for example, as to whether or not aliens who reside outside the United States, but who regularly commute to places of employment within our country, are entitled to hold green cards and permanent resident status as regular bona fide immigrants. I feel there is reason to believe that such a practice is an abuse of the intent and purpose of the Immigration and Nationality Act. Green cards are not permanent re-entry permits." [Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 2 (1967)]
>
> "Senator Yarborough [Chairman, Senate Committee on Labor and Public Welfare]: It seems to me that when you issue the green card, the way it works is, in effect, saying: Well, the man who holds a green card, this represents an executive suspension of the immigration laws of Congress, because you say in your statement that he is a resident alien, the fact that he works in this country he qualifies as a resident alien but is not required to be a resident here.
>
> "Secretary Wirtz. That does not make sense.
>
> "Senator Yarborough. No. You say he is a resident alien when he is not a resident alien. He is a resident of the other nation, travels back and forth across the bridge every day and you give him a spacial status. This is just a suspension. This green card is something outside the law, it seems to me." [*Id.* at 33-34]

"Senator Kennedy: Now, it seems to me that the question about these fellows going back [commuters returning to the United States] by your admission and by Judge Youngdahl's description in the court [Amalgamated Meat Cutters v. Rogers, 186 F. Supp. 114, 119, note 6 (D. D.C., 1960)] that this is fiction. I hope that you are not relying on that." [Id. at 56]

* * *

"Senator Kennedy: . . . But even using that definition of the permanent resident [Section 101(a)(27)(B)], I do not see how you could possibly say that these individuals who do reside in Mexico could fulfill that requirement. It says, are residing permanently in the United States, they are not residing permanently in the United States.

"Mr. Gordon [General Counsel of the Immigration and Naturalization Service]: Lawfully admitted for permanent residence.

"Senator Kennedy: But they are not residing.

"Mr. Gordon: That is true, they are given the privilege of establishing residence." [Id. at 62-63]

"Senator Yarborough: It is an administrative practice [commuter practice] that grew up outside of the law. There is no legal basis for the issuance of the green card. There is no law provided for the issuance of the green cards. The green card system operates rather freely outside of the immigration law. And it evolved in the mid-twenties under the immigration laws." Hearings on the Impact of Commuter Aliens Along the Mexican and Canadian Borders before the Select Commission on Western Hemisphere Immigration, Part I, p. 211 (1968)]

"Senator Yarborough: I want to emphasize that what he [Mr. Guerra, a witness] says, that this is correct, that there is no statutory authority whatsoever, that they just administratively decided to do this. [Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness; Part V, Border Commuter Labor

> Problems before Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 82 (1969)]
>
> "Senator Muskie: Despite the fiction that the commuter is an immigrant, it is clear that what really has been established is a work permit system. This 'amiable fiction' in its early years applies only to daily commuters in border towns. More recently, however, it has been extended far beyond border towns to seasonal workers who stay in the United States for longer periods of time. However applied, it is still a fiction, a product of bureaucratic accommodation." [Cong. Rec., March 4, 1970, S. 2942]
>
> "Congressman Feighan [Chairman of the House Subcommittee on Immigration and Nationality]: This system--a creature of administrative ingenuity without a statutory base--permits Canadian and Mexican workers who have been lawfully admitted to the United States for permanent residence, and who hold alien registration receipt cards, commonly known as 'green cards,' to reside in Canada or Mexico and regularly commute across the border to places of employment in the United States. [115 Cong. Rec., pp. 7752-7753 (1967)]

In recent Senate hearings, Senator Mondale, Chairman of the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, and former Assistant Secretary of Labor Stanley Ruttenberg specifically discussed and rejected the Immigration Service's reenactment argument. Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness, Part 5: Border Commuter Labor Problem before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. (1969). Ruttenberg, who had been Manpower Adminisrator and a member of the Select Commission on Western Hemisphere Immigration, said that "nothing in the legislation, nothing in the law . . . condones or even established in any way the fact that a commuter may live in Mexico and work in the United States. Id. at 45. Senator Mondale stated that the position of the Immigration Service concerning reenactment was "specious." Id. at 56. He then went on to say (id. at 56, 92-93):

> "[I]t is a very, very tenuous argument. It is one that you use when you want policy to come out that way, and apparently someone wanted it to come out that way."
>
> * * *
>
> "They have taken the position, apparently in the Justice Department, to the effect that . . . when we passed the 1965 act, we were mindful of the commuter practice, and therefore incorporated it by reference.
>
> "I think, as the Senator from New York knows, that that was one of the most tenuous legal theories that one could go on, to let our legislatures ratify illegality when they adopt a ruling not dealing with the subject, but in the same generic area. That is basically the thin position of the Justice Department."

We submit that Senator Mondale was correct--that the defendants' reenactment theory is totally without support either in law or in fact.

B. Section 212(a)(14) Requires That Commuters Obtain a Labor Certification from the Secretary of Labor Before Reentering the United States

1. The Language of Section 212(a)(14) Applies to Commuters.

An immigrant may not be admitted to the United States unless the Secretary of Labor has certified, pursuant to

Section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14), that there are not sufficient domestic workers to perform such labor and that his employment would not adversely affect the wages of American laborers. Section 212(a)(14) is applicable to aliens "seeking to enter the United States, for the purpose of performing skilled or unskilled labor" who come within Section 101(a)(27)(A) of the Act, 8 U.S.C. 1101(a)(27)(A), i.e., "an immigrant who was born in an independent foreign country of the Western Hermisphere."

Daily and seasonal commuters come within Section 101(a)(27)(A) because they were born in Mexico, and therefore the certification requirements of Section 212(a)(14) are fully applicable. The Secretary of Labor has determined pursuant to Section 212(a)(14) and 29 C.F.R. 60.2 thereunder that the supply of domestic farm labor is sufficient and that the admission of farm laborers would adversely affect wages and working conditions of domestic workers. Schedule B, following 29 C.F.R. 60.6. The commuter alien employed as an agricultural worker or seeking such employment is therefore ineligible for admission to the United States.

Since the language of Section 212(a)(14) and 101 (a)(27) are clear there is no need to rely upon other aides to judicial construction. However, if the language is deemed ambiguous, we submit that both the purpose and legislative history confirm that Section 212(a)(14) applies to daily and seasonal commuters.

2. The Purpose of Section 212(a)(14) Supports Its Applicability to Commuters.

Prior to 1952, American labor was protected by a provision relating to the exclusion of contract laborers and persons induced or assisted to come to the United States. However, the "contract labor clauses" were omitted from the Immigration and Nationality Act of 1952 and Section 212(a)(14) was added. The purpose of the new provision was to provide more adequate protection for labor (H. Rep. No. 1365, 82d Cong., 2d Sess. 50 (1952)):

> "It is the opinion of the Committee that this provision will adequately provide for the protection of American labor against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country."

See also S. Rep. No. 1137, 82d Cong., 2d Sess. 11 (1952).

Unfortunately, Section 212(a)(14) proved ineffective in practice. It allowed immigrants to enter the United States unless the Secretary of Labor certified that the entry of the immigrants would harm American labor. 66 Stat. 183. Stanley H. Ruttenberg, then Assistant Secretary of the Department of Labor, described the operation of Section 212(a)(14) (Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 90th Cong., 2d Sess., "Review of the Operation of the Immigration and Nationality Act as Amended by the Act of October 3, 1965, pp. 111-112 (1968)):

> "Under the old provision, the Department of Labor was able to prevent undue competition with U.S. workers and adverse effects on their wages and working conditions only on rare occasions. . . . The basic reason for this was that the Department of Labor had no way to know who had applied to immigrate to the U.S. to take employment, or what their occupation, residence, or employer would be."

The one exception was for Mexican workers. Because of its concern about the adverse effects of cheap Mexican labor on wage rates in the southwest, the Department of Labor starting in 1963 began examining Mexican workers on a job-by-job basis. Id. at 122-123. However, such procedures were extremely cumbersome and not highly effective.

Congressional concern over the ineffectiveness of Section 212(a)(14) was reflected in the 1965 Amendments to the Immigration and Nationality Act which radically changed the operation of Section 212(a)(14). Under the new section, the burden of initiating the certification process was removed from the Secretary of Labor and placed on the entering alien. He can now only enter the United States if the Secretary of Labor determines that his entry will not harm American labor. Under the new provision, the Secretary has with one single determination found that domestic farm labor would be threatened by the entry of foreign agricultural workers. Schedule B, following 20 C.F.R. 60.6.

After calling Section 212(a)(14) "the major safeguard for American labor," Gordon and Rosenfield go on to say (Sec. 2.4Q):

> "The 1965 amendments made a radical change in the statute, in order to strengthen the controls protecting American labor."
>
> * * *
>
> "The 1965 amendments obviously represent a dramatic reversal of course for the immigration policy of the United States. Previously those seeking economic opportunities had been encouraged to come. On and after December 1, 1965, access to employment opportunities in the United States has been severely curtailed."

The Immigration Service claims that commuters are only subject to the Secretary of Labor's labor certification on their initial entry into the country. Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness; Part 5: Border Commuter Labor Problems before Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 27 (1969). Thereafter, according to the Immigration Service, they are immigrants returning from a temporary visit abroad (Section 101(27)(B)) rather than immigrants born in the Western Hemisphere (Section 101(27)(A)).

The majority of commuters initially sought entrance to the United States between 1952 and 1965. Most entered the country during the period when Section 212(a)(14) was virtually ineffective. Thus, the practical effect of the Immigration Service's interpretation of Section 212(a)(14) is that most commuter aliens who freely cross our borders to work or seek work have never been subject to the labor certification requirement. They continue to enter the United States to perform agricultural labor even though the Secretary of Labor has determined that there is a surplus of domestic labor and the entry of immigrants to perform such labor harms the wages and working conditions of domestic labor.

Exemption of the commuter from Section 212(a)(14) as an immigrant returning from a temporary visit abroad defeats the stated purpose of that provision to protect domestic workers from competition with foreign labor. All immigrants entering the United States to work must obtain a labor certification on their initial entry. The immigrant who establishes a permanent residence in the United States is not subject to the certification thereafter on his return from "a temporary visit abroad" because he has himself become a domestic American worker. The commuter should be subject to the certification at every entry because he never ceases to be a foreign worker. Living in a foreign economy he is not subject to the same costs as the American worker. The lower wages which he will thus accept, the working conditions that he will endure, are the very conditions which Section 212(a)(14) was meant to prevent.

3. The Legislative History of Section 212(a)(14) Supports Its Applicability to Commuters.

The legislative history of Section 212(a)(14) indicates that the commuter worker is the very prototype of foreign worker against whom the section was meant to protect.

Nothing could be clearer than the House Judiciary Committee's analysis of Section 212(a)(14) at the time of the 1965 amendments (H. Rep. No. 745, 89th Cong., 1st Sess. 21 (1965)):

> "[Section 212(a)(14)] is restated so as to require an affirmative finding by the Secretary of Labor that any alien seeking to enter the United States as a worker, skilled or otherwise, will not replace a worker in the United States nor will the employment of such alien adversely affect the wages and working conditions of individuals in the U.S. similarly employed." (Emphasis added)

Congressman Cellar, the long-time Chairman of the House Immigration and Naturalization Committee and manager of the 1965 amendments to the Immigration Act during floor debate, was adamant that every alien coming from the Western Hemisphere to work in the United States must obtain a labor certification (Cong. Rec., 89th Cong., 1st Sess. 21591 (1965)):

> "[I]n each instance, in every single instance there must be issued by the Secretary of Labor a certificate to the effect that as to the person coming from the Western Hemisphere, his coming will not have the effect of depressing wages or adversely affecting the conditions of employment."

Although the Committee report accompanying the amendment did not mention the commuter by name, Senator Kennedy, its Floor Manager, and Charles Gordon, the Service's General Counsel, had a long discussion concerning the applicability of Section 212(a)(14) to commuters during Senate hearings subsequent to adoption of the amendments. First, Senator Kennedy said that the exclusion of commuters from the labor certification would blatantly circumvent the intent and scope of the 1965 amendments (Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before the Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 6 (1967)):

> "What we are really interested in by the adoption of those provisions [212(a)(14)] is not that we are just trying to keep someone out of the United States but that we would not have the effect of depressing wages and working conditions of American nationals.
>
> "Clearly, where we see individuals [commuters] being able to come into the United States and circumvent the intent and scope of this legislation, it is a matter of considerable distress."

Senator Kennedy next expressed amazement and disbelief that Mr. Gordon was exempting the commuter from the certification requirements of Section 212(a)(14) by relying on an interpretation of returning immigrant in Section 101(a)(27)(B) which Gordon had himself termed "a fiction." Id. at 56.

In short, the legislative history, as well as the language and purpose of Section 212(a)(14), make clear that it applies to commuters whenever they enter the United States.

4. The Board of Immigration and Naturalization Appeals Has Held That Section 212(a)(14) Applies to Commuters.

In the first legal challenge to the commuter practice, Amalgamated Meat Cutters v. Rogers, 196 F. Supp. 114 (D. D.C., 1960), the district court held that commuters were subject to the Secretary of Labor's certification under Section 212(a)(14). The Secretary of Labor had certified that the admission of any alien for employment at the Peyton Packing Company of El Paso, Texas, would adversely affect domestic workers. Despite the Secretary's certification, the Immigration Service continued to allow commuters to work at the plant, as immigrants "lawfully admitted for permanent residence returning from a temporary visit abroad." The court concluded that to except the commuter from the Secretary's certification by calling him a returning resident was to make a "shambles" of the certification requirement (id. at 119):

> "But when the Secretary of Labor has issued a certification under § 212(a)(14) pertaining to particular employment, such an alien would be excludable. It is not sufficient to resort to an 'amiable fiction' to justify a wholesale evasion of the Secretary's certification--Mexican commuters destined for the employment covered by the certification must be excluded just as any other Mexican non-resident alien. To do otherwise would be to permit administrative practice to make a shambles of a provision which with § 101(a)(15)(H), was newly designed by the 1952 Act in order to assure 'strong safeguards for American labor.'"

In Matter of J---- P----, 9 I. & N. 591 (1962), the plaintiff commuter had been commuting to work from Mexico for three years when he started to work for the Peyton Packing Company in El Paso, where the Secretary of Labor had earlier issued a labor certification pursuant to Section 212(a)(14). The facts of this case are symptomatic of the entire commuter problem. The plaintiff, a Mexican national, had attempted to live in El Paso, Texas, in order to remove himself from the commuter class. The wages at the Peyton plant were so low, however, that he could not afford to live in El Paso and he moved back to Mexico. From his home in Mexico, he continued to work for the Peyton Packing Company daily, acting as a strikebreaker against the domestic workers at the plant, hindering their efforts, and helping to lower their wages to a level on which a resident of the United States could not survive. Id. at 593. The Board of Immigration Appeals held that the plaintiff commuter could not enter the United States to work at the Peyton packing plant but said that this determination was dictated by the district court decision in Amalgamated and did not apply generally. Id. at 594.

The Board of Immigration Appeals has subsequently restated this holding as a principle applicable to all commuters. Matter of Bailey, 11 I. & N. 466 (1965). There the Board broadened the commuter category (see pp. 64-65 above) because it found that domestic labor was already adequately protected from the commuter by the Secretary of Labor's certification under Section 212(a)(14). Id. at 467, 471, note 2.

Thus, the Board of Immigration Appeals has concluded that, even though commuters can utilize green cards to enter the United States, they still can only enter when the Secretary of Labor has not certified that their employment will harm American labor. Since the Secretary of Labor has found that commuters who enter the United States to perform agricultural labor are harming American labor, commuters are not entitled to enter the United States for this purpose. In short, this means that both daily and seasonal commuters must be barred from entering the United States pursuant to green cards, immigrant visas or any other documentation as long as there is no shortage of domestic agricultural labor and their entry is adversely affecting wages and working conditions for these domestic workers.

II

PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON CLAIM TWO

MOST COMMUTERS ARE PROPERLY NON-IMMIGRANTS AND MAY NOT BE ADMITTED UNLESS THERE IS A LABOR SHORTAGE

We assumed in Claim I that commuters are immigrants and contended that they are required to have an immigrant visa and a labor certification from the Secretary of Labor in order to enter the United States. We submit, however, that the large majority of the Mexican nationals involved in this case should properly be reclassified as non-immigrants under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), rather than, as defendants treat them, as immigrants.

If commuters are non-immigrants, they cannot enter the United States to perform agricultural labor. Subsection (H)(ii) allows non-immigrants to enter the United States only "if unemployed persons capable of performing such service or labor cannot be found in this country." Department of Labor regulations provide that non-immigrants may only enter the United States pursuant to this Section Section if the prospective employer satisfies criteria established by the Secretary of Labor, including that he has attempted to recruit farmworkers locally; has offered wages, housing, and other fringe benefits at specified levels; and has abided by state and local labor, health, and housing laws. 20 C.F.R. 602.10. Since there is no shortage of farm labor in the United States, Mexican nationals are not now admissible for such employment.

A. Most Commuters Coming to the United States Are Properly Non-immigrants

Section 101(a)(15)(H) defines as a non-immigrant:

> "[A]n alien having a residence in a foreign county which he has no intention of abandoning . . . (ii) who is coming temporarily to the United States to perform temporary services or labor . . . ."

Congress intended in the Immigration and Nationality Act of 1952 to differentiate carefully between immigrants coming to the United States for permanent residence and non-immigrants coming temporarily (H. Rep. No. 1365, 82d Cong., 2d Sess. 36-37 (1952)):

> "The immigrant class includes those aliens who seek to enter the United States for permanent residence, while the non-immigrant class includes those aliens who seek to enter for temporary periods of stay."

Congress therefore in Section 101(a)(15)(H) created a new class of non-immigrants coming temporarily "to perform services or labor," which exactly describes the situation of the commuter worker. The purpose of the provision was to allow the admission of workers to alleviate "labor shortages as they exist or may develop in certain areas or certain branches of American productive enterprises, particularly in periods of intensified production." Id. at 44-45.

In deciding to add Subsection (H) to the Act, Congress was heavily influenced by the impact of alien labor on domestic agricultural labor. S. Rep. No. 1515, 81st Cong., 2d Sess. 586, 590 (1950). Officials of the Immigration and Naturalization Service had indicated to the Judiciary Committee that there was a shortage of domestic farm labor. Id. at 586. On the other hand, both labor and farm organizations had testified to the adequacy of domestic labor and the adverse effects on domestic labor of importing alien agricultural laborers. Ibid.; Joint Hearings Before the Subcommittee of the Committee on the Judiciary, 82d Cong., 1st Sess. on S. 716, H.R. 2379 and H.R. 3816, "Bills to Revise the Laws Relating to Immigration, Naturalization and Nationality," pp. 119-122, 664 (1951). A spokesman for the American Federation of Labor told the Subcommittee that importation of Mexican labor was particularly injurious to American workers (id. at 663):

> "The Mexican immigration into this country has tended to increase since the turn of the century. They have accepted wages much lower than the native American and have been displacing American agricultural labor and railroad labor. Our wages in agriculture are still notoriously low, but as long as it is possible to get 'cheap' foreign labor, there is little likelihood of it being raised."

Weighing the conflicting testimony, Congress added Section 101(15)(H) which allowed for temporary admission of agricultural labor but only after a determination had been made that such labor was not available in this country. S. Rep.

No. 1515, supra, p. 586. Significantly, the only explicit references to the commuter system in Senate Report No. 1515 came under headings involving non-immigrants (pp. 535-536, 616).

Plaintiffs contend that the large majority of daily and seasonal commuters involved in this case come clearly with Section 101(a)(15)(H). Subsection (H) covers a person coming to this country to perform services or labor if both the visit and the service are temporary. Hess v. Esperdy, 234 F. Supp. 909, 911 (S.D. N.Y., 1964); Gordon and Rosenfield, Immigration Law and Procedure, Sec. 214a (rev. ed., 1966). Commuters have residences in a foreign country which they have no intention of abandoning and they come only temporarily to the United States. All commuters who work as agricultural laborers only during the agricultural season provide only temporary services or labor.

Subsection (H) does not apply to daily commuters who come to the United States to a steady job throughout the year. While such a commuter comes temporarily to the United States each day, the services he provides are not temporary. However, most commuters who work as agricultural laborers, like seasonal agricultural commuters, work only during the agricultural season and therefore fall within Subsection (H). Moreover, Subsection (H) applies to all daily commuters, even if they work all of the year in the United States, who do not work for the same employer since both their visits and the services they performed would be temporary.

All seasonal workers are properly non-immigrants under Subsection (H). They, by definition, come to the United States only for the agricultural season and therefore time only temporarily to perform temporary services.

In its 1955 Report on the Administration of the Immigration and Nationality Act, the House Committee on the Judiciary explicitly stated that seasonal workers should be considered as non-immigrant temporary laborers under Section 101(a)(15)(H)(ii) (Report on the Administration of the Immigration and Nationality Act by the House Committee on the Judiciary, Part II, p. 131 (1955)):

> "The Special subcommittee is of the opinion that the economic development of the Virgin Islands of the United States could be further enhanced by a more realistic and expeditious application of subdivision (H) (ii) of Section 101(a)(15) of the Immigration and Nationality Act, which would permit the temporary employment of natives of the British island of Tortola at jobs which become available at specified seasons, either in agriculture or in the tourist (hotel) industry. The language of this section has been construed by the immigration officials in such manner that these hotel and agricultural workers are considered permanent workers. It is the sense of the Subcommittee that this interpretation is too restrictive, and that Congress intended that workers employed in seasonally available jobs should be considered as temporary workers. (Emphasis in original)

The Immigration Service has, itself, quoted the Judiciary Committee's Report to substantiate the fact that seasonal workers are temporary laborers coming within Section 101 (a)(15)(H). "Employment of Western Hemisphere Natives as Temporary Workers," in Report of the Select Commission on Western Hemisphere Immigration, p. 96 (1968). Moreover, the Immigration Service told the Commission, in direct contradiction of the facts, that

> "Since the termination of the 'bracero' program on December 31, 1964, the importation of Mexican temporary agricultural laborers has been accomplished in accordance with the provisions of section 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act, and implementing regulations in 8 C.F.R. 214.2(h)."

And Gordon and Rosenfield state (Sec. 6.9):

> "Since the expiration of the special legislation dealing with the braceros, the normal immigration procedure for the importation of temporary workers does offer the only legal avenue for obtaining temporary agricultural workers from Mexico."

Despite the specific direction of the Judiciary Committee to treat seasonal workers as non-immigrants and the Service's claim that it was doing so, the Immigration Service broadened the daily commuter concept to include seasonal workers after the end of the bracero program in 1964. INS Responses, supra, pp. 1-10.

Congress agreed in 1963 to terminate the bracero program at the end of 1964. 109 Cong. Rec. 15203, 23155, 23222 (1963). The reason that the program was not extended was, as Senator Proxmire stated, because of the adverse impact of the bracero program on domestic American labor (id. at 15187):

> ". . . those who believe in free enterprise in America, who believe in the law of supply and demand, should not support a governmental policy subsidized by the American taxpayers that imports foreign workers at a time when there is considerable unemployment, and when the effect of the importation is to keep the wages of domestic workers from rising.

Secretary of Labor Willard Wirtz described the termination of the bracero program as follows: (Report of the Secretary of Labor, "Year of Transition - Seasonal Farm Labor - 1965," pp. 2, H-2 (1965)):

> "The drastic reduction in the use of foreign farm labor in 1965 reflected the recognition that continuation of the previous practice would have been totally inconsistent with the contemporary national decision to perfect the American social and economic order."

* * *

> "There has been increasing complaint against the importation of these hundreds of thousands of foreign workers--being paid wage rates as low as 60 cents an hour--while about four million U.S. men and women are unemployed.
>
> "There has also been accumulating evidence that U.S. workers will be available to do this work if decent working conditions are provided and if it is paid for on terms in line with those for other work that is equally hard and unpleasant.
>
> "The 88th Congress, taking these facts into account decided to terminate Public Law 78."

Congress felt that American agricultural workers would be better protected if the bracero program was eliminated and future bona fide labor needs were supplied by non-immigrants entering under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (109 Cong. Rec. 15187):

> "I [Senator Proxmire] would like to eliminate Public Law 78 [the bracero program]. Then it would be possible, under present policies which have been followed by the Department of Labor since June of this year, to limit the number coming in under Public Law 414, [Section 101(a)(15)(H)] to provide for the legitimate need for additional Mexican workers."

Secretary Wirtz promised that, "There will be no administrative extension of the situation existing under Public Law No. 78." Report of Secretary of Labor, supra, p. H-3. Mr. Wirtz stated that "proposals to extend Public Law 78 by administrative action of one kind or another fly squarely in the face of the decision made by Congress. These proposals must be, and they are, rejected." Id. at H-2.

Despite Secretary Wirtz's position, the Immigration Service blatantly ignored the Congressional mandate to consider seasonal workers as non-immigrants. James S. Hennessy, Assistant to the Commissioner of the Service, has admitted that the seasonal workers are in fact ex-braceros (Hearings on Employment of "Green Card" Aliens During Labor Disputes before the Special Subcommittee on Labor or the House Committee on Education Labor, 91st Cong., 1st Sess. 73 (1969)):

> "The seasonal worker is a person who came into being largely after the repeal of the bracero law.
>
> "In fact, many of them are former braceros who have been admitted to the United States temporarily for employment under that act."

See also p. 73 above.

The metamorphosis of the bracero to seasonal commuter is directly inconsistent with Congress' purpose in ending the bracero program to eliminate its adverse impact on American workers. For the ex-bracero as a commuter immigrant enters and leaves the United States freely, subject to none of the many safeguards for domestic labor which characterized the bracero program prior to its termination in 1964. Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 126 (1967); Unpublished Transcript of Hearings on Migrant and Seasonal Farmworker Powerlessness; Part 5: Border Commuter Labor Problem before the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 87 (1969).

Since most of the Mexican nationals involved in this case come within the definition of non-immigrant in Subsection (H), they are automatically not immigrants. The Immigration and Nationality Act defines an immigrant as an alien not coming within the ten categories of immigrants. Section 101(a)(15), 8 U.S.C. 1101(a)(15). Therefore, we submit that the Act requires defendants to consider daily and seasonal commuters as non-immigrants who must satisfy the criteria of Subsection (H) and the Department of Labor's regulations in order to enter the United States.

Plaintiffs' position is fully consistent with the history of the immigration laws. When Congress in 1924 designated temporary visitors "for business or pleasure" as non-immigrants (Immigration Act of May 26, 1924, 43 Stat. 153, Sec. 3), the Immigration Service considered daily commuters to come within this provision because of their temporary contact with the United States. _Study of Population and Immigration Problems_, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 178 (1963).

In 1927, the Service reversed its position and found that commuters were not "temporary visitors for business." General Order 86, April 1, 1927, p. 1. The Service's position was upheld by the Supreme Court in _Karnuth ex rel. Albro_ v. _United States_, 279 U.S. 231 (1930). The Court held that the word "business" should be interpreted to mean "intercourse of a commercial character" and not "labor for hire". _Id_. at 244. Since any alien coming to the United States is deemed an immigrant "unless he can bring himself within one of the exceptions" for non-immigrants (_id_. at 243), the Court concluded that daily commuters were automatically to be considered as immigrants. Thus, the Court did not question the temporary nature of the commuter's contact with the United States.

In the Immigration and Nationality Act of 1952, Congress reenacted in Section 101(a)(15)(B) the "business or pleasure" provision of the 1924 Act. In addition, Congress enacted Section 101(a)(15)(H) as a new category of non-immigrant. As Gordon and Rosenfield point out (Sec. 2.14a), Subsection (H) was intended to allow aliens coming temporarily to the United States for employment to enter as non-immigrants, just as this class had been able to do before the Service's 1927 regulations which were upheld in Karnuth ex rel. Albro. Consequently, Subsection (H), as its language clearly shows, restored the situation existing prior to 1927 when commuters were considered as non-immigrants.

Moreover, the decision in Karnuth ex rel. Albro was explicitly based on the purpose of the Immigration Act "to protect American labor against the influx of foreign labor." 279 U.S. at 243. At that time, there were no limitations on the entrance of non-immigrants while a quota had recently been imposed for immigrants. Consequently, when the Court held that commuters were immigrants, it was protecting American labor. Today, however, since Subsection (H) was enacted for the purpose of protecting American labor and specifically restricts non-immigrants from entering the United States for employment unless no other labor is available, it is consistent with both the Supreme Court's rationale for its 1930 decision and the purpose of the immigration laws to find that Subsection (H) covers commuters.

B. Commuters, Who Originally Entered as Immigrants But Are Properly Non-immigrants, Should Be Reclassified as Non-immigrants

It is clear that all seasonal and most daily commuters coming to the United States for the first time today must be considered as non-immigrants under Section 101(a)(15)(H). It is also plain that commuters who have previously come to the United States as immigrants admitted for permanent residence must be considered as non-immigrants.

First, commuters who have come since adoption of Subsection (H) in the 1952 Act should have been considered as non-immigrants when they first entered. The error of the Immigration and Naturalization Service in considering them as immigrants cannot convert their non-immigrant into immigrant status.

Second, whether or not commuters came to the United States for the first time prior to adoption of Subsection (H) in 1952, they now must be considered as non-immigrants. The law is plain that each and every time an alien enters into the United States, his entry must be legal as of that time. It is not sufficient that the alien legally entered the United States on prior occasions. Shaughnessy v.. United States ex rel. Mezei, 345 U.S. 206, 213 (1953); Bonetti v. Rogers, 356 U.S. 691, 698 (1958); Besterman, "Commentary on the Immigration and Nationality Act" in 8 U.S.C. 1 to 1280, p. 46 (1954); 1 Gordon and Rosenfield, supra, Sec. 2.19.

This doctrine has been specifically applied by the Board of Immigration and Naturalization Appeals to a commuter. Matter of Estrada-Tena, 12 I. & N. 422 (1967).

Consequently, when a commuter enters the United States today, the legality of this entry must be determined as of that time. Even if the commuter entered legally one or hundreds of times before as an immigrant, his entry must be reevaluated. Since he is a non-immigrant, he must conform to the laws relating to non-immigrants.

The fact that commuters originally were admitted for permanent residence does not mean that they automatically continue to have that status. Section 101(a)(20) of the Act (8 U.S.C. 1101(a)(20)) makes clear that an immigrant coming to the United States for permanent residence does not acquire permanent and irrevocable status. That Section provides:

> "The term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

Secretary of Labor Wirtz testified before the Senate Subcommittee on Immigration and Naturalization that it was the intent of Congress that if an alien did not establish his permanent residence in the United States, his immigrant status should be discontinued. Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 24 (1967).

Since most commuters have never become permanent residents, they never actually had this status. And all commuters, who by definition have no permanent residence in the United States, do not have this status today.

Officials of the Immigration and Naturalization Service have told Congressional committees that, if a commuter is admitted to the country as an immigrant for permanent residence, this privilege is permanent. In 1963, L. Paul Winings, then General Counsel of the Service, explained to a subcommittee of the House Committee on the Judiciary that the alien has "paid [his] way into the ballpark." Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, pp. 167-168 (1963). Six years later, Charles Gordon, the Service's General Counsel, made a similar statement to a perplexed Senate Subcommittee on Immigration and Naturalization that commuters continue to have "the privilege of establishing residence." Unpublished Transcript of Hearings on Alien Commuter "Green Card" System before Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary, 90th Cong., 1st Sess. 63 (1967). Members of the committees rejected these interpretations at both hearings. Id. at 62-63; Study of Population and Immigration Problems, supra, pp. 168-169.

The Board of Immigration and Naturalization Appeals has specifically held that the language of Section 101(a)(20) relating to change of status includes changes of status from immigrant to non-immigrant. In the Matter of M---- P----, 9 I. & N. 747, 749 (1962); In the Matter of S----, 6 I. & N. 392 (1954). The latter decision was approved by the Attorney General in 1955. Ibid. See also Matter of Marcos, 11 I. & N. 740 (1966); In the Matter of T----, 6 I. & N. 778 (1955); In the Matter of M----, 5 I. & N. 642, 647 (1954). Consequently, it is clear that immigrants do not maintain the status of a permanent resident alien under Section 101(a)(20) if they in fact do not have a residence in this country.

If residence in this country has nothing to do with immigrant status as the Immigration Service officials suggested, then logically the commuter is no different from any other immigrant alien. He simply has not elected to exercise his privilege of residence in this country. However, the Immigration Service, contrary to its own interpretation of immigration law, does not treat commuters like other immigrants who are actually permanent residents of this country.

First, if a commuter is not employed in this country for a period of six consecutive months, the Service removes his immigrant status. E.g., In the Matter of L----, 4 I. & N. 454, 456 (1951); Matter of M---- D---- S----, 8 I. & N. 209 (1958); Matter of Smith, 11 I. & N. 738 (1966). It does not matter that the commuter has been trying diligently to find employment. This rule is not applicable to non-commuter immigrants with actual residences in the United States.

Second, the Service's regulations provide that aliens may not cross the border using a Form I-151 to accept employment at a place where the Secretary of Labor has determined that a labor dispute exists. 8 C.F.R. 211.1(b)(1). Defendants have interpreted this regulation to ban any daily commuters or those seasonal commuters who do not live and work in the United States for at least six months each year from working for such an employer. Stipulation, pp. 3-4, see pp. 117-126 below. Again, this rule does not apply to immigrants who are bona fide permanent residents of the United States. 1 Gordon and Rosenfield, supra, Sec. 2.30 (1968 Supp.).

Third, commuters, unlike immigrants with actual residences in this country, are not eligible for naturalization. 8 U.S.C. 1427 requires for naturalization that an alien have residence:

> "continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time . . . [and have] resided continuously within the United States for the date of the petition up to the time of admission to citizenship. . . ."

Commuters cannot be naturalized since they are not residents of the United States. Petition of Wright, 42 F.

Supp. 306 (E.D. Mich., 1941); Petition of Correa, 79 F. Supp. 265 (W.D. Tex., 1948); Statement of L. Paul Winings, then General Counsel of the Immigration and Naturalization Service in Study of Population and Immigration Problems, House Committee on the Judiciary, Subcommittee No. 1, Special Series No. 11, p. 180 (1963); Statement of Assistant Secretary of Labor Stanley H. Ruttenberg, Hearings on the Impact of Commuter Aliens Along the Mexican and Canadian Borders before the Select Committee on Western Hemisphere Immigration, Part I, pp. 14-15 (1968).

In short, the Mexican nationals involved in this case are commuters and not permanent resident aliens. As such, they come to the United States temporarily to provide temporary services and labor. They are therefore properly non-immigrants governed by the provisions of Section 101(a)(15)(H).

III

PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON CLAIM THREE

COMMUTERS MAY NOT ENTER THE COUNTRY TO TAKE EMPLOYMENT WHERE A LABOR DISPUTE EXISTS

Plaintiffs allege in Claim III that defendants have failed to enforce 8 C.F.R. 211.1(b)(1) according to its explicit terms. This provision which was added to the regulations in 1967 provides:

> "When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or lay-off of employees is in progress at a named place of employment, Form I-151 shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for and seeks reentry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention of accepting employment at the place where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at that place subsequent to the date of the Secretary of Labor's determination."

The validity of this regulation was upheld in Cermeno-Cerna v. Farrell, 291 F. Supp. 521 (N.D. Cal., 1968), pending on appeal to the Court of Appeals for the Ninth Circuit.

The Secretary of Labor determined in 1967 and 1968 that labor disputes existed between the United Farm Workers Organizing Committee, a plaintiff in this case, and 39 growers of table grapes. See Affidavit of Cesar Chavez, attached to the Memorandum of Points and Authorities in

Opposition to Motion to Dismiss, pp. 2-4. The Secretary of Labor has never rescinded this determination.

A. The Regulation on Its Face Plainly Applies

1. The Regulation Covers All Commuters.

Defendants' interpretation of 8 C.F.R. 211.1(b)(1) has not been entirely clear or consistent. An internal memorandum of the Immigration and Naturalization Service describes the case of an immigrant who works for the same American employer from March to September, then follows the harvest until December, and returns to Mexico for December, January and February. He has no fixed residence in the United States. During the period the alien is in Mexico, the Secretary of Labor determines that a labor dispute exists at the alien's place of employment from March to September. The memorandum concludes that while the decision depends on the "facts in the case, . . . there is indication the primary purpose of the alien's entry into the United States is to resume residence" (emphasis in original). Cong. Rec., March 4, 1970, S. 2954.

In In the Matter of Benavides-Hinojosa, decided September 11, 1968, the Special Inquiry Officer concluded that 8 C.F.R. 211.1(b)(1) did not apply to Mexican aliens who used a Form I-151 to enter the United States each March or April and returned to Mexico each November; who left personal belongings in the United States which they intended to return to; and who returned to the same one-room home in Mexico each year which had been built some 20 years before by the male head of the family. The District Court came to the same conclusion based on similar facts in Cermeno-Cerna v. Farrell, supra.

Gordon and Rosenfield state that 8 C.F.R. 211.1(b)(1) was intended to apply only to commuters, and not to aliens with actual permanent residences in the United States. Section 2.30 (1968 Supp.). In Cermeno-Cerna, Mr. Gordon submitted an affidavit as General Counsel of the Immigration and Naturalization Service stating that the regulation applies to "aliens who have been lawfully admitted to the United States for permanent residence but who actually live in a foreign country and come to the United States periodically to work . . . ." The use of the word "periodically" suggests that the regulation is applicable to seasonal as well as daily commuters since they also have permanent residences in Mexico and therefore live there. On the other hand, this affidavit may be construed so as to apply only to daily commuters on the ground that seasonal workers live in the United States, even if temporarily.

In the Stipulation in this case, defendants have suggested a new interpretation of the strike-breaking regulation. Stipulation, pp. 3-4. They state that the regulation applies to all daily commuters and to those seasonal commuters who do not both live and work in the United States for at least six months each year.[1]

Until March 1970, however, the defendants' screening of workers entering the United States from Mexico had been so lax that the policies stated in the Stipulation--and especially the application of the strike-breaking regulation to seasonal commuters working and living in the United States less than six months a year--could not be enforced. The commuter simply crossed the border using his Alien Registration Receipt Card as entry documentation. The Immigration Service neither kept a record of the date of his entry nor made any attempt to determine his destination. Unpublished Transcript of Hearings on Migrant and Seasonal Farmworkers Powerlessness; Part 5: Border Commuter Labor Problem before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 32-33 (1969). Since a border guard had no way of knowing whether a commuter had entered the country or had been employed here during the preceding six months, the six-month requirement was unenforced. Id. at 31, 54.

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[1] However, as the Stipulation also makes clear (p. 2), seasonal commuters who do not work in the United States for six consecutive months lose their status as commuters and the right to use a Form I-151 regardless of the strike-breaking regulation. Consequently, under defendants' view of the strike-breaking regulation, it applies to few bona fide seasonal commuters. If the defendants enforced the rule stated in the Stipulation against commuters not in this country for six consecutive months, a seasonal commuter could only be affected by the strike-breaking regulation if he worked for two or more short periods in the United States so that he did not fail to work here for six consecutive months but worked and lived in the United States for a total of less than six months in a year.

In March 1970, the Immigration Service for the first time began preparations to enforce their 40-year-old requirement that a commuter loses his status if out of the country for six consecutive months. Now all commuters have two entry documents--the green card and a new document which records that on a stated date the commuter was employed with a stated employer. Every six months this document must be renewed.

We submit that defendants' interpretation of the regulation stated in the Stipulation is directly in conflict with the plain language of 8 C.F.R. 211.1(b)(1). The regulation applies both to all daily commuters and to all seasonal commuters--that is, to all farm workers without actual permanent residences in the United States--whether or not they live and work in the United States for six months each year.

8 C.F.R. 211.1(b)(1) provides that a "Form I-151 shall be invalid" if used to enter the United States to work at a place where a labor dispute exists. On its face, the regulation therefore applies to all Mexican nationals who use a Form I-151 to enter the United States whether commuters or not, whether they have permanent residences in Mexico or the United States. Furthermore, in promulgating the regulation, the Secretary of Labor specifically stated that "the basis

and purpose of the . . . [regulation] is to preclude the use of Form I-151 by a lawful permanent alien resident in lieu of his obtaining . . . a reentry permit when such use would adversely affect a domestic labor dispute." 32 Fed. Reg. 112.

While the regulation appears to apply to all Mexican nationals using a Form I-151, it may be reasonable to limit its scope to nationals without permanent residences in the United States. However, under no possible construction of the regulation can it be held not to cover all Mexican nationals without permanent residences in the United States.

Section 101(a)(33) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(33)) defines "residence" for all purposes under the Act including for regulations promulgated pursuant to it. Residence is defined by that Section to mean "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Consequently, as we have shown above (pp. 38-47), an alien who has no fixed, continuing dwelling place which he owns or rents in the United States and does have such a fixed, continuing dwelling place which he returns to in Mexico, has his residence in Mexico and not in the United States. The residences of daily commuters are plainly in Mexico. Similarly, seasonal commuters have their residences in Mexico even if they live and work in the United States for more than six months each year if they retain no actual residence in the United States. Such a residence is not established even if they work for the same employers for a portion of each year and leave some personal belongings with their employers when they return to their principal actual dwelling places in Mexico. This reading of the regulation is consistent with its obvious purpose to prevent foreign nationals from acting as strike-breakers in domestic labor disputes.

2. The Regulation Covers Commuters Coming to a Place Where a Labor Dispute Exists Even Though They Have Worked There Before.

The regulation applies to all aliens who enter the United States to work "where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at that place subsequent to the date of the Secretary of Labor's determination." Defendants interpret the regulation so that "employment is regarded as continuous if the alien commuter is returning on each occasion to the same employer, even if he has been absent from the United States for several months each year" and therefore has not worked at that place for several months. Stipulation, p. 4.

We submit that this position is inconsistent with the regulation and its purpose. Such a commuter has commenced his employment after the Secretary has acted. He was not employed while he was outside of the United States. Arguably, this construction should not apply to a commuter who has a contract to return to the same employer. But it clearly should apply to the large majority of seasonal commuters (or daily commuters who work only during the agricultural season) who leave this country with only the hope that the employer will have work for them when they return.

Such a construction is not only consistent with the language of the regulation but is compelled by its purpose, as stated by the Department of Labor, to prevent use of the Form I-151 which "would adversely affect a domestic labor dispute." 32 Fed. Reg. 112. Defendants' construction of the regulation is not consistent with this purpose since it would not cover thousands of commuters who return each year to the same employer.

B. Defendants Are Bound by the Clear Meaning of the Regulation

It is, of course, clear that defendants' construction of the regulation is not binding. While administrative construction is, in some circumstances, entitled to respect (Brewster v. Gage, 289 U.S. 327, 336 (1930)), it is not conclusive in interpreting a regulation whose language is clear any more than administrative practice is controlling in interpreting a statute in the same situation. As Justice Story stated in United States v.

Kirkpatrick, 22 U.S. (9 Wheat.) 720, 735 (1824), "whatever weight the practice of the Government may be entitled to, in cases of doubtful construction, it can have no influence to change the clear language of the law." Accord, e.g., United States v. Missouri Pacific R. Co., 278 U.S. 269, 280 (1929); Neuberger v. Commissioner, 311 U.S. 83, 89 (1940).

Moreover, defendants' interpretation of the regulation is not even entitled to substantial weight. It is well established that administrative interpretation of a statute is entitled to weight only if uniform and consistent. United States v. Missouri Pacific R. Co., supra, 278 U.S. at 280; Burnet v. Chicago Portrait Co., 285 U.S. 1, 16, 20-21. This principle applies equally to administrative interpretation of a regulation. Here, as we have seen above, defendants' interpretation of the regulation is not consistent. Further, it is not embodied in any legally authoritative decision or rule, does not include any well-reasoned justification, and was not even fully stated until the Stipulation in this case.

The Supreme Court has held that, although administrative agencies can amend their regulations, they are bound by them as long as the regulations remain unchanged. Service v. Dulles, 354 U.S. 363, 388; Vitarelli v. Seaton, 359 U.S. 535, 539-540. Defendants have failed to enforce the regulation. Plaintiffs are therefore entitled, as the complaint prays, to a declaratory judgment stating that Mexican nationals without permanent residence in the United States cannot use a Form I-151 to enter the United States to work at a place where the Secretary of Labor has found that a labor dispute exists prior to their employment and to an order requiring the defendants to enforce the regulation consistent with its clear meaning.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully submit that Plaintiff's Motion for Summary Judgment should be granted on all three claims.

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August 21, 1970

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of Points and Authorities in Support of Motion for Summary Judgment was mailed, postage prepaid, this 21st day of August, 1970, to attorneys for defendants and plaintiffs-intervenors, addressed as follows:

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Senator MONDALE. The hearings on migration labor will now be adjourned to be resumed at a later date.

(Whereupon, at 12:05 p.m., the committee recessed subject to the call of the Chair.)

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